## The Ripped Chest

## Public Policy and the Poor in India

Can we match the tenacity and resilience of the many millions of the excluded and deprived who cannot and will not read *The Ripped Chest*: Can we and those near to us muster and sustain the courage to see and stand up for what is right?

A book like The Ripped Chest might cover any one of the major groups of those who suffer poverty, discrimination and marginalisation. Instead, it covers them



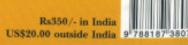
all - the rural poor, or slumdwellers and the homeless, or tribal people, or dalits from dams and other projects and with convincing detail. The evidence is that, however benign the intentions, what happens on the ground is often perverse, leaving poor people not empowered and prospering but weaker and poorer than before.

The state and its servants appear as much a problem as a solution. Whether it is the misappropriations of top-down targeted rural programmes, the mindless oppression of petty urban traders by officials and of the homeless by police, the expropriation of their heritage and birthright from tribal people, the dismal record of implementation

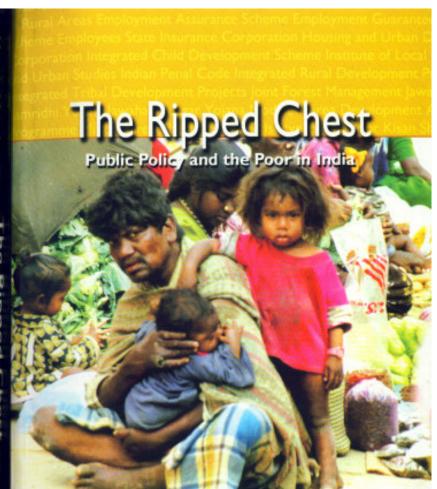
of protective legislation for dalits or the inhumanity with which so many dam oustees have been treated, it is not just the awfulness and injustice, but the sheer scale that is mind-blowing.

May The Ripped Chest inform and emcourage that brave vanguard of government officers and activist who already confront secrecy, corruption and malpractice and who are already committed to transparency, honesty and justice.









Harsh Mander

orporation Integrated Child Development Scheme Institute of Local Urban Studies Indian Penal Code Integrated Rural Development Integrated Tribal Development Projects Joint Forest Management Jawahar Rozgar Yojana Modified Area Development Ogramme Minor Forest Produce Methyl Jaocynate Mazdoor Kisan Special Scheme Minor Forest Produce Methyl Jaocynate Mazdoor Kisan Special Scheme Minor Forest Produce Methyl Jaocynate Mazdoor Kisan Special Scheme Mazdoor Kisan Special Scheme Minor Forest Produce Methyl Jaocynate Mazdoor Kisan Special Scheme Minor Forest Produce Methyl Jaocynate Mazdoor Kisan Special Scheme Minor Forest Produce Methyl Jaocynate Mazdoor Kisan Special Scheme Mazdoor Kisan Special Scheme Mazdoor Kisan Special Scheme Mazdoor Kisan Special Scheme Mazdoor Kisan Special Special Scheme Mazdoor Kisan Special Special

# THE RIPPED CHEST

Public Policy and the Poor in India

Harsh Mander



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Dimple
and
Suroor

### Gandhi's Talisman

I will give you a talisman. Whenever you are in doubt, or when the self becomes too much with you, apply the following test. Recall the face of the poorest and the weakest man whom you may have seen, and ask yourself, if the step you contemplate is going to be of any use to him. Will he gain anything by it? Will it restore him to a control over his own life and destiny? In other words, will it lead to *Swaraj* for the hungry and the spiritually starving millions? Then you will find your doubt and your self melting away.

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It is a daunting honour to be invited to write a foreword for this book of Harsh Mander's. His earlier work, *Unheard Voices: Stories of Forgotten Lives*, is the most stark and disturbing description of the bad life of those who are poor and marginalised that I have ever read, and perhaps that has ever been written. It recounts the lives of poor people as they have told them. No reader can remain unmoved. Few can fail to feel outrage. For, without pretension it presents realities about the human condition which shame us all who are not poor and for which we all bear responsibility, but which I, and I dare say many readers, prefer to deny or shut out.

It is from that book that the title of this one is taken. A ripped chest is a cruel image of mutilation and pain. It links the forgotten lives of 'Unheard Voices' and the world of public policy with which this second book deals. Each book presents realities essential to the other. They should not be separated. I urge that they be read together. The first describes the unseen anguish, humiliation and deprivation typical of so many millions of lives. This second book now shows where so much of the responsibility lies, both in the machinery and servants of the state, and by implication with all of us, who to varying degrees and in varied ways have the power to make a difference.

We have here a work of magisterial range and scholarship. A book like this might have covered any one of the major groups of those who suffer poverty, discrimination and marginalisation. It could have been devoted either to the rural poor, or slumdwellers and the homeless, or tribal people, or *dalits*, from dams and other projects. Instead it covers them all, and with convincing detail. To this is added the credibility and authority of one who speaks from hard-won experience in government administration, and who has the scholarly commitment and personal courage to write about things as they are.

The shortcomings of government policies and programmes designed to help and 'uplift' the poor have been exposed before. What is new here is the cumulative effect of authoritative evidence from such a wide range of programmes and conditions. On the negative side, the abuses of human rights by a democratic state which are recounted are so distressing and so pervasive that it is difficult to understand how they can persist; and

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the combination of scale and ineffectiveness of some of the government programmes described is little short of awesome. More than perhaps any other country, India has persevered with programmes targeted to individuals or households. So often, it seems, these either miss their targets or hit them and do more harm than good. Here the evidence is that, however benign the intentions, what happens on the ground is often perverse, leaving poor people not empowered and prospering but weaker and poorer than before. There are exceptions, like self-targeting employment guarantee schemes. But overall, the state and its servants appear as much a problem as solution. Whether it is the misappropriations of top-down targeted rural programmes, the mindless oppression of petty urban traders by officials and of the homeless by police, the expropriation of their heritage and birthright from tribal people, the dismal record of implementation of protective legislation for dalits, or the inhumanity with which so many dam oustees have been treated, it is not just the awfulness and injustice, but the sheer scale that is mind-blowing. To take just one example, the estimate that since 1947 some 50 million people may have been displaced by projects is but one illustration of the enormity of impoverishment inflicted in the name of development.

Despite all this evidence, the thrust is that of the positive practitioner who looks for what works and what can be done, not the negative academic who finds everything wrong and ends in impotence and despair. The new directions of hope of people's empowerment in Part III recognises the many difficulties and imperfections of the *panchayati raj* decentralisation and the obstacles of corruption. But it finds two sources of hope.

The first is leadership and human nature. Mander's own experience and that of others who have attempted to fight corruption frontally has been that 'If strict and fair action against corruption is accompanied by motivation of staff, recognition of good work, and responsiveness to genuine grievances, employee motivation is found not to decline but in fact greatly blossom among the large majority of staff. Human nature is not by and large irredeemable'.

The second source of hope, powerfully argued by Mander is the right to information. Transparency associated with people's planning in Kerala, and the movements for social audit and access to information in Rajasthan, are persuasive evidence that freedom of access to information is a key, if not the main key, to better governance. And the action needed is unequivocal.

Unheard Voices and The Ripped Chest: Public Policy and Poor People in India are appeals for imagination, realism, solidarity, commitment, and action: for imagination and realism to recognise how the state so often promotes and perpetuates the persecution of the poor; for solidarity with them and commitment to change; and for resolute and sustained action to reform the policies of the state and the practices carried out in its name. The challenges are framed in India; but their span is global. There are lessons here for all of us, from whatever country or continent. Reflecting on these two books, the question is whether we, the readers, can match the tenacity and resilience of the many millions of the excluded and deprived who cannot and will not read them. It is whether we and those near to us can muster and sustain the courage to see and stand up for what is right.

Let me hope that The Ripped Chest will be widely available, widely read, and widely consulted. May it, together with Unheard Voices, provoke outrage and inspire action by the many who are in positions where they can make a difference. Most obviously and directly, these are officials and politicians, at all levels. They are also the many in civil society - in NGOs, in the professions, in business, in unions - who are or can become in many different ways activists for change. And for all of these it is also their families who either undermine or support them in taking stands of courage and sacrifice. All have their part to play. For it is the accumulation of individual actions that counts. Some are dramatic and visible. Many appear mundane and are seen by only a few. All matter. All can make a difference. All can combine and contribute to movements. May The Ripped Chest inform and encourage that brave vanguard of government officers and activists who already confront secrecy, corruption and malpractice and who are already committed to transparency, honesty and justice. May it also encourage many others to join them. For there is nothing inevitable about the bad life experienced each day by so many crores of poor and marginalised people. That bad life is made by us, by humankind. And what we make we can unmake. The Ripped Chest shows us many ways in which this has to be done. May it inspire good actions and much change for the better.

21 October 2001 Robert Chambers

#### The Home Beneath the River

Two decades after he was uprooted from the land of his ancestors, Nanhe Ram still speaks little. Looking much older than his 60 years, he sits for long hours outside his dilapidated hut in the resettlement village of Aitma. He has no land, no cattle, no sons; his ageing wife labours all day in the forests or in the fields of the big farmers of the village to keep the fires burning.

There is anguish but little recrimination, as he talks haltingly of the past. The first time they heard about the large dam that would submerge their village, he recalls, was when daily wages were 12 annas (which would probably be in the mid-1950s). Their village, as indeed the entire region, was hardly connected to the outside world, and until then they had encountered very few government officials. When men on bicycles, wearing trousers and shirts, rode into their villages to inform them about the dam, the tribal people living there had got scared and run away into the forests.

He did not know then that a gigantic thermal power complex was being planned in the neighbourhood of his village, at Korba, for which the two rivers that flowed there, the Hasdeo and Bango, were to be dammed. Fifty-nine tribal villages like his were to be submerged, 20 completely and the rest partially, along with 102 square kilometres of dense sal forest, to create a vast new reservoir of 213 square kilometres. No one consulted with the 2,721 families of these villages, condemned to become internal refugees in the cause of 'national development', about the project and how it would alter their lives so profoundly and irrevocably. Some 2,318 of these families, or an overwhelming 85 per cent, were tribals or dalits, who like Nanhe Ram were the least equipped because of their temperament, culture and lack of experience, to negotiate their new lives.

The survey work continued for six or seven years and it was in 1961 that the first phase of the project for the construction of the barrage and major canal was sanctioned. Nanhe recalls their fear and excitement when a small plane flew in as part of the ongoing survey work. However, it was only a decade-and-a-half later, in 1977, that the first settlement, Nanhe's village, was actually submerged. In the intervening years, construction continued apace, but no one from the government planned any steps for their rehabilitation or even as much as spoke

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with them about how they might rebuild their lives in the future. They were completely ignored.

In 1977, a few months before their homes were actually submerged, the farmers were packed into a truck and driven to the divisional headquarters of Bilaspur, located in the heart of the Chhatisgarh region of Madhya Pradesh. Nanhe recalls that they arrived at the imposing building housing the district office in the late afternoon and were hustled into a courtyard. There they were addressed by an official, who informed them that their village would be lost to the dam reservoir in just a few months, during the next monsoon, and that the government was therefore, paying them the first instalment of their compensation. For Nanhe, this was a niggardly Rs540.

When their truck returned to their village, it was morning. The inhabitants found that the local revenue officer, the tehsildar, was waiting for them. The tehsildar wanted to recover the land revenue due from Nanhe out of this compensation amount. Nanhe lost Rs300 to him, and the remaining Rs240 also disappeared before long, merely in day-to-day survival.

During the meeting at the district office, someone had timidly asked, "But where are we to go when our village goes under in the next monsoon?" The official had replied tersely, "How do I know? Why don't you go to your relatives' homes?" But, some weeks later, a band of activists held a series of meetings in their village. "How can they ask you to go to the homes of your relatives", they thundered. "Did your relatives build this dam?" They organised demonstrations and rallies, in which many young tribals of the village also participated. Nanhe was confused and frightened, and he held himself aloof. Eventually, the government conceded that the tribal families whose homes were being submerged would be given house-sites in a resettlement colony located in the forest uplands.

In the few months that remained, Nanhe made plans in his own way for the future. Where and how they would live, he did not know. He was worried first about his cow, whom they all loved. He knew that he would not be able to take care of her in the resettlement village, at a time when even keeping his wife and two daughters alive would be very hard. He also could not think of selling her because she was like a member of the family. So he gave her to an Ahir cowherd and promised to pay him Rs150 each year for looking after her. Nanhe continued, despite all his subsequent tribulations, to save and send money for the upkeep of the cow for 10 years, until the cow died.

Just a day before the monsoon broke, the trucks arrived. The people were given only a few hours to bundle their belongings into the trucks. They were then driven to the

resettlement village, in which house plots of 0.05 acres each had been hurriedly cleared for them in the forest. The rains broke early, and Nanhe and his family spent the entire monsoon huddled with their few belongings under a mahua tree. In the dry spells, Nanhe struggled, trying to build a small hut, while his wife scoured the forests for food.

The remaining instalments of compensation were paid only 15 years later, in 1992. Nanhe received a cheque of Rs2,000, which he used to repay loans to the moneylender. He survived on occasional wage labour, but only barely. It was around then that for the first time, under pressure from activists, the government initiated a few livelihood programmes. Although the government has since spent some two crore rupees in the resettlement region in recent years to belatedly provide livelihoods to the displaced families, there has been little success. Fishing in the new reservoir is dominated by outside contractors. Forty lakh rupees were spent on a poultry farm, which ran for a few months, with 12 beneficiaries who were given 100 birds each. The birds suddenly died of some illness, and the farm closed down. The manager of the poultry farm departed after making a young tribal girl pregnant. This was the only productive outcome of the enterprise. Amber charkhas or spinning looms were installed, but raw material supply and marketing were erratic. The looms provided wages in fits and starts, and that too of only one rupee a day.

The resettlement villages are at the periphery of the large artificial reservoir, connected by earth roads that get submerged after the rains each year. In these inaccessible, remote, artificial settlements, not only are jobs hard to come by but life is very hard in other ways as well. Schools, health centres, credit co-operatives and ration shops rarely function. If someone is seriously ill during the rainy months, the only way to reach a hospital is by undertaking a perilous journey of three hours in a small leaking dinghy.

Not surprisingly, of the 208 families that had been resettled in Aitma, only 60 remain. The rest have migrated, either to the forests as encroachers, or to the city slums, in desperate search of means for bare survival.

Nanhe is among the few who remain, because he had neither the strength, nor the will to struggle and to start life anew one more time. He sits quietly outside his hut for most of the day. But sometimes when he speaks, he says softly to anyone who is willing to hear: "When I am on a boat in the middle of the reservoir, and I know that hundreds of feet beneath me, at that very point, lie my village and my home and my fields, all of which are lost forever, it is then that my chest rips apart, and I cannot bear the pain."

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This collection of essays is the outcome of an effort to examine the design, content and impact of public policies on people living in poverty in contemporary India. India is home to the largest number of poor people in the world. It also has a colossal and still burgeoning interventionist state, whose stated goals and political imperatives impel massive, diverse and multi-faceted demonstrations of public programmes to combat poverty.

Despite some conspicuous successes, the manifest cumulative failure of a half-century of these state efforts to overcome, or even significantly dent, the base of poverty in India is what motivated the investigation that underlies this book. It is written also against the background of the threatened retreat of the state worldwide from its most fundamental responsibilities of ensuring equity, justice and decent living standards for all its people.

The first section attempts a critical appraisal of the dominant neo-liberal notions of 'good governance' in contemporary social science literature. These lay stress on a reduced role of the state that facilitates, nurtures and shares power and responsibilities with a relatively unfettered private sector; liberalised markets; competitive provisioning of public goods by both the public and private sectors; the rule of law, which protects the right to property and the sanctity of contracts; prevents crimes against property and person, and ensures stability and predictability necessary for private investment to flourish; transparency and accountability. If we unbundle these beliefs, they are premised on a number of axioms. The first of these is the structural adjustment policies that liberate the market, rein in government spending, secure macro-economic stability, and liberalise trade and investment, would always lead to enhanced economic growth. The second is that economic growth is synonymous with development. The third is that economic growth would benefit all sections of people, including impoverished and socially marginalised groups. The book tries to argue that this notion of 'good governance' works mainly for business and capital, but not for poor and marginalised people. They need instead, a strong and active state, regulated markets, legislative interventions for equity and strong genuinely democratic institutions of participatory governance and public accountability.

Some chapters are prefaced by life-histories of people living in poverty which have been researched and written for this book, and which are directly relevant to the theme of the chapters. In the final chapter, I try

to bring together and analyse elements of these and other life-histories, to illuminate the multi-faceted, textured nature of the lived experience of poverty and marginalisation. There is economic denial, hunger and homelessness. There is deprivation of power even over the circumstances of one's own life, let alone over governance institutions, public officials and an oppressive social order. There is discrimination and social exclusion based on gender, caste, class, ethnic community and disability, which are practised even by institutions of the state, including the judiciary. And at the same time, there is sometimes exceptional courage and human spirit to reclaim the dignity and humanity, of which the wider political economy and social arrangements combine to dispossess them.

In the next two parts of the book, an attempt is made to look, as with a magnifying glass, at the content and actual working of public policy to combat economic poverty and social inequity in India. It is obviously not feasible to examine in depth the entire range of public policy relating to people living in poverty in contemporary India, because this covers a wide, voluminous, bewildering diversity. It was, therefore, necessary to make a choice of some important segments of such policy, for in-depth investigation in this book.

Any choice, in the end, is argueable and somewhat arbitrary. However, it is important for me to explain the reasons for what I chose to study and what I left out. Probably the two disadvantaged social groups which have been the subject of the most intensive range of policy instruments for positive discriminations have been the *dalits* or ex-untouchables or Scheduled Castes(SC); and the tribal or indigenous communities, known as the Scheduled Tribes (ST). It is for this reason that these social groups have been selected for examination, rather than women or persons with disabilities, both of whom have tended to be neglected to a far greater degree by public policy in India. Positive discrimination for what is the largest historically exploited group, namely women, has not been as centrestage in public policy in India. Policy blindness has been extreme towards persons with disabilities. I intend to return in a later work to a study of public policy in India in relation to these social groups.

The second part of the book attempts to unravel public policy in the context of the two selected groups of people for whom the largest battery of diverse policy instruments have been specifically designed in India – the SCs and STs.

Chapter 2 examines the status of the ex-untouchable dalit community and state interventions.

The chapter concludes that despite growing social and political mobilisation and extensive state intervention, dalits continue to subsist in conditions of abject poverty and illiteracy and are victim to untouchability and atrocities in large parts of the country. The state must intervene in determined activist fashion, with a wide range of measures. These would include legal aid guarantee, reorientation of the law and order machinery, legal literacy and mass mobilisation for legal action, public sector and judicial reform. In addition, there is the imperative for systematically ensuring minimum needs in dalit settlements, genuine outreach of health and literacy programmes, and breaking finally, the bond between traditional 'unclean' occupations and caste.

The chapter on state policy towards the indigenous tribal people attempts to describe the grave and complex predicament of tribal communities in contemporary India, and the legislative and policy interventions that have been designed to address these problems. It traces how state ownership of forests facilitated unhindered exploitation of natural resources by the state.

This chapter demonstrates that as tribal people in India hopelessly grapple with these consequences, official tribal policy gropes confusedly in a vain attempt to find the golden mean between the two extremes of isolation and assimilation.

The third part of the book looks closely at official programmes that are designed to address rural and urban poverty. Although organically linked, the nature of poverty in rural and urban settings, and the response of the state to each manifestation of poverty, in terms of both scale and content, differs widely.

In India's planning process, reflected in its successive five year plan documents, poverty has been measured and sought to be addressed primarily in terms of economic deprivation, chiefly low levels of income and consumption. The widest battery of public policy instruments have been designed to address rural poverty which is manifested in terms of economic disadvantage and deprivation. Therefore, this once again is the subject of detailed investigation in this book. When examining public policy for rural poverty, it seemed necessary for the sake of completeness

also to examine public policy for urban poverty, although our investigation reveals this to be an area of significant and grave neglect by policy-makers in India.

The chapter on rural poverty and the role of the state sets out to examine closely the objectives, strategies and impacts of the major programmes undertaken by the Government of India aiming at overcoming poverty, in order to assess in some depth their strengths and weaknesses. It argues that poverty is a complex and multi-faceted condition which requires not only a much more vigorous thrust, but that it is also a concern that needs to be mainstreamed into the entire gamut of state interventions, especially in sustainable agriculture and the social sectors. It holds that the micro-credit programmes as they are presently designed are fundamentally flawed and need to be severely curtailed and refashioned. On the other hand, rural works programmes, with more effective focus on creating or augmenting livelihoods of the poor, need to be expanded greatly and to include a legally enforceable guarantee component.

In the subsequent discussion, on the state and the urban poor in India, it is demonstrated that for women and men, girls and boys who live in poverty in towns and cities, life is extremely hard in many ways. If they have access to shelters at all, these are illegal, insecure, cramped and utterly ramshackle. Otherwise people are compelled to live even in rain and cold under the open sky; their habitat is dehumanised, unserviced and polluted; their livelihoods casual, uncertain, underpaid and criminalised. Most of these are the direct outcomes of state policy. Firstly continuing failures to arrest and reverse hopeless, grinding deprivation and social discrimination in the countryside. Second, a legal and regulatory regime that imposes illegality and criminalises the often valiant daily struggles of people in poverty in cities for survival, shelter and livelihoods. Third, niggardly budgetary resources, even in comparison to rural poverty, and a town planning and land regime, which together almost completely exclude people with low and uncertain incomes from urban land of any value, for their shelter, health and livelihoods.

In the recommendations, it is pointed out that apart from the massive increase in state outlays to address urban poverty, the self-help efforts of the urban poor to develop their own livelihoods can be strengthened and nurtured only in an alternate policy and legal regime which is favourable to the urban poor.

The limited successes and often spectacular failures of these government policies, which emerge from our investigation, lead us to recommendations for not weaker but stronger and better-designed government interventions. But we recognise that civil society action has a major impact on the content and implementation of state policies. Therefore, in the fourth part, the book selects, out of the rich, diverse and complex range of contemporary civil society initiatives in India, one incipient popular institution and one social movement which have contributed significantly to deepening democratic space by incorporating people directly into the enterprise of governance. These are, respectively, the statutory institution of the gram sabha or village assembly, and the movement for the right to information. The first is an example of highly significant legal spaces for direct local democracy and participatory governance, which have been created by state policy itself, but where people's own action has in most instances tended to lag behind. The second is an example of a movement of poor rural workers and farmers, who pushed democratic spaces at their own initiative, crafted new powerful methods to hold local government accountable, and influenced the provincial and central governments to legislate right to information laws. I have included these few illustrative examples in this study, to stress that I see hope not in a strong interventionist state alone, but ultimately in the strivings of people in general - and poor and marginalised groups, in particular. These exertions of people are for pushing democratic frontiers, holding the state continuously accountable, seizing direct control over the extremely difficult circumstances of their lives, and in the end; for a more just and humane world.

Chapter 6, on direct democracy and gram sabhas in India, studies briefly the rationale for direct participatory democracy, in the context of the contemporary Indian experience. It then examines closely the gram sabha, how laws in various states in India have legally empowered gram sabhas, and the procedures laid down for the functioning of this statutory collective. In the end, I study two case studies of the experience of the actual functioning of gram sabhas, with regard to some aspects of self-governance.

The seventh chapter examines against a background of the pervasive phenomenon of corruption in public life, the movement for the right to information in India. In the first part of this chapter, I study the phenomenon of corruption by public authorities in India, particularly the civil services: its causes, dynamics and the methods and dilemmas

associated with its possible control. I examine the efficacy of systemic regulation and reforms to reduce corruption. The second part traces the movement for right to information in India, and demonstrates the critical significance of citizen vigilance and assertion in checking the corrupt and arbitrary exercise of state power. It concludes that it is through the creation of effective legal spaces for the exercise of the people's right to information that the most powerful, sustainable and reliable safeguards against corruption in public life can be erected. The chapter also examines closely the kind of legislation that is required to make the right to information a legal entitlement.

The concluding chapter attempts to bring together some of the diverse strings in the book and weave them into a set of conclusions. It envisages the struggles of impoverished and oppressed people everywhere to be for strong, caring states that actively intervene for their paramount duty of securing justice, equity and happiness for all citizens. It maintains, however, that strong states are a necessary but not sufficient condition for good governance for poor people. It requires at the same time strong institutions and organisations of dispossessed and excluded people who assert as an inalienable entitlement their right to participate in all aspects of governance, and to hold the state tightly, continuously and effectively accountable.

## ACKNOWLEDGEMENTS

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A great deal of the observations in this book have been derived from my direct experience of implementing official anti-poverty programmes, policies and laws in several poor, predominantly tribal districts in the large forested state of Madhya Pradesh, located in the heart of India.

I have learnt most from people who are living in poverty themselves. These include tribal people who stubbornly cling to their world-view and values of humanity and integrity even as powerful oppressive systems combine to threaten perilously their world; women everywhere who live with courage and caring amidst neglect and abuse; dalit communities emerging with determined dignity from centuries of savage social exclusion and political disarticulation; and people with disabilities and stigmatised illnesses like leprosy, struggling in a world that denies them even the most ordinary and commonplace life chances.

Among the many who have contributed to the insights of this book, I must make special mention of the activist civil servants whom I most admire, S R Sankaran and scholar-administrator N C Saxena, for their commitment to the poor and to justice; social scientist Jean Dreze, whose work as well as the way he lives his life, taught me many things, and others like R Srinivasa Murthy, Ghanshyam Shah, Pamela Shurmer-Smith, Vidya Rao; social activists Baba Amte, Shankar Guha Niyogi, Aruna Roy, Medha Patkar, Mihir Shah, Shankar, Nikhil Dey, Pradip Prabhu, Shiraz Balsara, Binayak Sen, Hiralal Sharma, M P Parameswaran, Sheela Barse, Vasudha Dagamvar, G Narendranath, Sister Bibbee, Sister White, Uma Sankari and several others.

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intelligent insights helped tighten my drafts and strengthen the (limited) scholarship of the work, and Vijay Naugain who with unfailing patience, gentleness and efficiency has supported the work in many ways.

The work on this book was also assisted greatly by Shekhar Singh, who generously gave me the space, both literally and figuratively, to enable me to work for over a year on portions of this book. I was on leave from the government, and he shared with me his office space, his secretarial assistance, but much more importantly, his active support to enable me to work through sometimes difficult times.

Harsh Mander New Delhi

## ABBREVIATIONS

ANMs	Auxilliary Nurse Midwife
APPs	Anti-poverty programmes
ASI	Assistant Sub -Inspector
DDA	Delhi Development Authority
DM	District Magistrate
DRDA	District Rural Development Agency
DWCRA	Development of Women and Children in Rural Areas
EAS	Employment Assurance Scheme
EGS	Employment Guarantee Scheme
ESI	Employees State Insurance Corporation
HUDCO	Housing and Urban Development Corporation
ICDS	Integrated Child Development Scheme
ICGUS	Institute of Local Government and Urban Studies
IPC	Indian Penal Code
IRDP	Integrated Rural Development Programme
ITDP	Integrated Tribal Development Projects
JFM	Joint Forest Management
JGSY	Jawahar Gram Samridhi Yojana
JRY	Jawahar Rozgar Yojana
MADAP	Modified Area Development Agency Programme
MFP	Minor Forest Produce
MIC	Methyl Isocynate
MKSS	Mazdoor Kisan Shakti Sangathan
MoRAE	Ministry of Rural Areas and Employment
MWS	Million Wells Scheme
L	National Commission on Urbanisation

#### The Ripped Chest

National Institute for Rural Development
National Institute of Urban Affairs
National Rural Employment Programme
National Sample Survey Organisation
Non-timber Forest Products
Panchayats (Extension to Scheduled Areas) Act
Public Distribution System
Participatory Poverty Analysis
Participatory Rural Analysis
Panchayati Raj Institutions
Rural Landless Employment Guarantee Programme
Rural Public Works Programmes
Rashtriya Swayamsevak Sangh
Structural Adjustment Programme
Scheduled Castes
Special Component Plan
Sub -Divisional Magistrate
Swarn Jayanti Gram Swarozgar Yojna
Scheduled Tribes
Tribal Development Cooperative
Training of Rural Youth for Self Employment
Tribal Sub Plan
Television
Urban Basic Services for the Poor
Urban Land Ceiling Regulation Act
United Nations Development Programme



Chapter	1

## As Though People Matter GOOD GOVERNANCE, POVERTY AND JUSTICE

Since the 1990s, concerns with governance have been suddenly thrust into the vocal centre stage of the mainstream international development debate. The belief in the critical role of a strong interventionist state is not new. It has been central, although often in contrasting ways, to the world view of both Keynesian and Marxist political economists through the greater part of the twentieth century - whether to address in various ways market failures, to ensure redistributive justice or to drive economic growth. However, the contemporary paradigm of good governance has distinct ideological sources from these major streams. It is derived from the neo-liberal project of structural adjustment. This paradigm stresses that governance is far more than just government and includes within its ambit also the private sector and civil society. Its major point of departure is that it regards the role of the state primarily to act 'not as a direct provider of growth but as a partner, catalyst, and facilitator' (World Bank 1997: 1). It continues to acknowledge the centrality of the state to economic and social development but stresses that this does not mean that development has to be state-provided.

This chapter reviews literature in order to examine the dominant neo-liberal paradigm of 'good governance'. It concludes with a critical analysis of its implications for poor people. It also critically examines the notion of justice.

#### Governance

The dictionary definition of 'governance' that comes closest to its current usage in the literature of international financial and

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multilateral development institutions is 'the act or process of governing, specifically authoritative direction and control' (Webster's Third New International Dictionary, 1986: 982). The working definition of the World Bank is that governance is 'the manner in which power is exercised in the management of a country's economic and social resources for development' (World Bank 1994: xiv). The UNDP definition is similar. According to it, 'governance is defined as the exercise of political, economic and administrative authority to manage a nation's affairs. It is the complex of mechanisms, processes, relationships and institutions through which citizens and groups articulate their interests, exercise their rights and obligations and mediate their differences' (UNDP et al 1997: 9).

The UNDP stresses that although governance includes the state, it also transcends it. It observes that 'governance encompasses every institution and organisation in society, from the family to the state', but its definition focuses on three important domains of governance that directly contribute to achieving sustainable human development. These include:

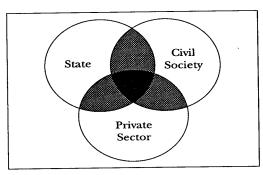
- ♦ The state (political and governmental institutions)
- Civil society organisations
- → The private sector (UNDP et al 1997: 9).

The state is the set of institutions that possesses the means of legitimate coercion and a monopoly over rule-making, within a defined territory and its population. The private sector covers private enterprises (manufacturing, trade, banking, co-operatives and so on) and the informal sector in the marketplace. Civil society, lying between the individual and the state, comprises individuals and groups (organised or unorganised) interacting socially, politically and economically and regulated by formal and informal rules and laws. Civil society organisations (CSOs) are the host of associations around which society voluntarily organises. They include trade unions; non-governmental organisations (NGOs); community-based organisations; gender, language, cultural and religious groups; charities; business associations; social and sports clubs; co-operatives

and community development organisations; environmental groups; professional associations; academic and policy institutions and media outlets. Political parties are also included, although they straddle civil society and the state if they are represented in parliament (Chandoke 1995).

In the neo-liberal perspective, the state, the private sector and civil society are perceived as overlapping, complementary, sometimes even competitive agencies of governance. The UNDP sees the potential complementarity of their roles for sustaining human development: 'The state creates a conducive political and legal environment. The private sector generates jobs and income. And civil society facilitates political and social interaction – mobilising groups to participate in economic, social and political activities, (UNDP et al. 1997: back cover).

(UNDP et al 1997: back cover)



The World Bank perceives significant potential for revitalising state institutions by dismantling erstwhile state monopolies for providing public goods like infrastructure and social services and facing competition both from the private sector and CSOs. This will be elaborated further in a later section on the role of the state.

#### Good Governance

Good governance or its description by less normative adjectives like 'effective' or 'sound' governance appeared suddenly in the

firmament of international development discourse with the *World Bank's 1989 Report* 'Sub-Saharan Africa: From Crisis to Sustainable Growth: A Long-Term Perspective Study'. The study dwelt on what it described as the 'crisis of governance'. Since then, the concept has come to dominate not only the development thinking and practice of the Bank but also the priorities of multi-lateral and bilateral development aid agencies, financial institutions and funded NGOs.

This did not represent a novel discovery about the critical role of the state in economic development. The twentieth century saw an unprecedented growth, both in theory and practice, of the size, functions and reach of the state, whether influenced by Keynesian remedies to address market failures or Marxist class analysis of the state and the abolition of private property or the emergence of new nations which shed colonial bondage and longed to bridge centuries of suppression through activist state action or the blossoming of the welfare state.

What is new since the turn of the 1990s is an altered perception of the role of the state, under the seismic global impact of the collapse of the Soviet Union and the Berlin Wall; and with these the demise of the great experiment, unprecedented in human history, of overarching comprehensive centralised state planning. From its ruins, economic frontiers between nations blurred and countries across the planet were drawn rapidly, almost inexorably, into an integrated global economy. A single economic orthodoxy swept the nations of the world, of market-led economic growth and the neo-liberal policies of structural adjustment that were powerfully promoted by international financial lending institutions.

The policies and practices of national and local governments were critical even in the past to the destinies of poor people because the state 'was the paramount agency for securing redistributive justice, social services and security, all vital for the survival of poor people. However, it is significant that good governance remained peripheral to the development discourse and practice until such time as it became a critical concern for trans-national capital.

This is noteworthy also because the underlying, usually unstated assumption in the contemporary dominant 'good governance' discourse, is that what is 'good' or 'sound' or 'effective' governance from the perspective of private businesses, would automatically be good in most cases for all sections of people, including impoverished and disadvantaged social groups. There is occasional acknowledgement that some people may just fall through the cracks in market-led economic development but this is seen merely as an unfortunate by-product of an essentially healthy and benign economic process. These possible outcomes lead to what in effect is perceived in literature to be at best a secondary responsibility of the state, namely, to protect vulnerable people through social security and insurance. However, the paramount feature of good governance in the neo-liberal orthodoxy remains state policies that best enable markets to flourish.

In its influential World Development Report 1997, the World Bank chose to focus on its perceptions of 'the role and effectiveness of the state: what the state should do, how it should do it, and how it can do it better in a rapidly changing world' (World Bank 1997: iii). The Report states that the intense focus on the state's role may be reminiscent of an earlier era, in which the state was called upon to play a central role to address market failures and the ravages wrought by the Great Depression and World War II, as well as the development aspirations of newly independent nations. This resulted in an unprecedented growth in the size and reach of governments worldwide, as industrial economies expanded the welfare state and the developing world mainly relied on state-led development approaches. The cumulative global outcome of this was that 'state spending now constitutes almost half of total income in the established industrial countries, and around a quarter in developing countries' (World Bank 1997: 2). The Report stresses repeatedly that its renewed focus on governance involves not an agenda for an uncritical strengthening of the state's role but instead a redefining of its responsibilities and measures for enhancing its capabilities and effectiveness.

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Significantly, this Report (World Bank, 1997) takes as its point of departure a survey it specially commissioned, not of poor people or ordinary citizens, but of domestic entrepreneurs (formal and informal) in 69 countries. The survey found that firms in many countries reported one or more among the triple burdens of corruption, crime and an unpredictable judiciary as formidable roadblocks to smooth market development in these countries. Primarily from the findings of this survey, the Report derives some of the basic ingredients of good governance, namely the rule of law, and a benign policy environment for market-led growth that induces firms to allocate resources efficiently, and innovate and improve productivity.

Apart from a foundation of law that stimulates market-led growth, another dominant theme in the neo-liberal paradigm is of a smaller, leaner state, which shares its responsibilities with the private sector. The World Development Report 1997, for instance, lays stress on 'knowing the state's limits" (World Bank 1997: 6) and acknowledging that the state need not be the sole provider of public goods like infrastructure and social services. The World Bank' 1994 stresses the desirability of "a smaller state equipped with a professional, accountable bureaucracy that can provide an 'enabling environment' for private sector-led growth, to discharge effectively core functions such as economic management, and to pursue sustained poverty reduction" (World Bank 1994: xvi).

The UNDP outlines a more broad-based, versatile role for the state—that of 'creating an economic environment conducive to sustainable human development, protecting the vulnerable, improving government efficiency and responsiveness, empowering people and democratising the political system, decentralising the administrative system, reducing gaps between rich and poor and between the weak and the powerful, encouraging cultural diversity and social integration, and protecting the environment' (UNDP et al 1997: 21–22).

However, in relation to the policy regime and the role of the private sector, the analysis and recommendations of the UNDP are remarkably similar to that of the World Bank. It recommends 'complex structural adjustment and economic stabilisation policies (which) focus on developing market institutions and liberalising trade regulations. The government must enact and enforce laws that promote economic competition, decentralise economic decision-making, stabilise inflation, reduce public deficits and free the market to set prices for privately produced goods and services. Economic reforms must impose hard budget constraints on state enterprises, promote privatisation, create freely operating capital and labour markets and create a trade regime that promotes international trade investment' (UNDP et al 1997: 23–24). It also quotes with approval former Canadian Cabinet Minister Marcel Masse, who states, 'governments can no longer monopolise, or even concentrate on, programme delivery' and adds that governments "require the participation of private and non-governmental organisations if services are to reach clients effectively and efficiently" (UNDP et al 1997: 26).

Subsequent sections will elaborate these and other elements of what is deemed to be 'good governance' from the neo-liberal perspective.

#### Rule of Law

Markets cannot function in an uncertain and insecure environment. They require the stability and predictability of the rule of law. Even in highly market-oriented societies, it is only the government that can lay down the rules that are required for markets to function most efficiently, and to intervene when markets break down (McLean 1987). If the state does not have effective and reliable institutions not only to make rules, but also to enforce them, to protect property rights, enforce contracts and maintain law and order, private investment will suffer greatly (Eggerton 1990).

In the survey commissioned by the World Bank of 3,600 firms in 69 countries referred to earlier (World Bank 1997), they identified the following as the major barriers in the legal environment to private investment:

- ◆ Unpredictable changes in law and policy
- ◆ Unstable government
- ♦ Insecurity of property

- ♦ Unreliable judiciary
- + Corruption.

What this survey confirms is that businesses are most averse to legal and policy uncertainty and unpredictability. This may result from opaque, non-participatory, corrupt and capricious decision-making, or from constitutional or unconstitutional changes in government. Arbitrary government actions may include unpredictable, ad hoc regulations and taxes, corruption and extortion.

If the state changes the rules often, or does not clarify the rules by which the state itself will behave, businesses and individuals cannot be sure today what will be profitable or unprofitable, legal or illegal, tomorrow. They will then adopt costly strategies to insure against an uncertain future – by entering the informal economy, for example, or sending capital abroad – all of which impede development (World Bank 1997:32).

Crime and theft were found in the Bank survey of firms also to substantially increase the cost of doing business. Laws that protect person and private property, and enforce contracts, and institutional mechanisms which effectively implement these laws, are therefore rated high in the neo-liberal paradigm of good governance. The prescriptions include a well-functioning and independent judiciary, which is viewed as a central pillar of the rule of law. If firms are forced to entail high 'transaction costs' in arranging, monitoring and enforcing contracts, this will inhibit investment. Corruption and redtape were found to entangle senior managers in unproductive and time-consuming relations, but what worried them even more was that payment of bribes did not guarantee that their work would be accomplished (World Bank 1997).

From this discussion emerge clearly what are perceived to be the essential building blocks of a sound foundation of law: protection of life and property from criminal acts, property rights – such as land titling, laws governing private contracts and securities markets, the protection of intellectual property and competition, law-restraints on arbitrary actions by government officials, and a fair and predictable judicial system.

#### A Benign Policy Environment

It is not enough to have in place the rule of law, constructed with building blocks of property rights and predictable state action. Market-led growth requires also the design of laws, and a policy environment—including macro-economic stability—which is 'benign' and positively conducive to private investment, both within and across national boundaries. The underlying assumption referred to earlier as well—which many would find highly contestable—is that what is good for private capital is good for citizens at large, and specifically for poor people, because the high road to development is paved with market-led economic growth.

Literature stresses a triad of clusters of policies, which are considered most conducive to growth. These are:

- + Providing macro-economic stability
- ♦ Avoiding price distortions
- + Liberalising trade and investment (World Bank 1997: 46).

The first set of recommended policies are strong measures for fiscal and monetary discipline, to secure macro-economic stability and rein in inflation. Inflation, particularly when it gallops beyond single digits, is seen to adversely affect capital accumulation because it discourages saving and investment. It destabilises the exchange rate and wages.

A second set of policy prescriptions attempt to correct price distortions created by hidden or open subsidies or taxes, over-valuation of currencies and what are regarded as unrealistically high wages. 'Legal minimum wages, for instance, may be set too high, unintentionally making it more difficult for unskilled and low-wage workers to find jobs in the formal economy. Similarly, the price of capital – the interest rate – is sometimes kept falsely high through heaving taxation of financial transactions or high reserve requirements' (World Bank 1997: 48). Price distortions are seen to discourage growth because they divert investment into unproductive sectors and reward inefficiencies.

The third leg in the triad of policy prescriptions for growth, are liberalised trade, capital markets and investment regimes. Integration into the global economy and open markets are recognised to carry

risks and costs, but they are believed to benefit businesses and consumers by ensuring greater global access to goods, equipments, technology and capital. This requires revamping of the tax regime, such as replacing national border taxes on goods with consumption based taxes such as the value added tax.

#### Fostering Markets for Growth and Public Services

A core feature of 'good governance' in the dominant contemporary received economic and political wisdom is of a state which allows and positively encourages markets to flourish. This involves in part a return to the belief that is grounded in Adam Smith's (1776) Wealth of Nations, that the market is the best instrument for realising growth and improving welfare. It also envisages an eminent role for a robust and substantially unfettered private sector in competing with or complementing state efforts to supply a range of public goods like infrastructure, health and education.

The UNDP places on the shoulders of the state the responsibility to create a 'conducive' political and legal environment, whereas it is the private sector, which is mainly charged with generating jobs and income (UNDP et al 1997). The World Development Report 2000/2001, (World Bank 2001) is devoted to the theme 'Attacking Poverty'. It marshals evidence to argue that 'as countries become richer, on average the incidence of income poverty falls. Other indicators of well-being, such as average levels of education and health, tend to improve as well. For these reasons, economic growth is a powerful force for poverty reduction' (World Bank 2001: 45).

The Report (*ibid*) goes on to argue that markets can, and frequently do, work for poor people, because they generate growth and expand opportunities for poor people. It cites empirical evidence to suggest that countries with market-friendly policies enjoy, in general, better growth performance and lower inflation than those in which these policies have not been undertaken, in the long-run. It argues that market-friendly policies on average benefit poor people as much as anyone else. It acknowledges that reforms, such as spending cuts in social sectors and food subsidies, may hurt the poor. However, it maintains that 'new job creation, technological change that raises

labour productivity and wages, and institutions that ensure equal opportunities for gaining access to the new jobs do much to ensure that the benefits from reform are widely shared' (World Bank 2001: 71).

State policies that foster markets are considered essential to good governance not only because they promote growth-led development', but also because new opportunities emerge for competitive, private sector creation and provisioning of public goods such as power, irrigation, transport, health and education, which were hitherto considered the exclusive domain of the public sector. It is maintained that:

Although the state still has a central role in ensuring the provision of basic services – education, health, infrastructure – it is not obvious that the state must be the only provider, or a provider at all. The state's choices about provision, financing, and regulation of these services must build on the relative strengths of markets, civil society, and state agencies (World Bank 1997: 27).

In the past, the economic rationale for public sector subsidising and delivering social services and infrastructure was derived from various sources. It was recommended on grounds of equity because poor people may not be able to access unsubsidised priced public services; therefore public sector provisioning was seen as an important redistributive measure. Capital markets were scarce or non-existent for social sectors and infrastructure. There were externalities, in the sense that there were benefits to society that went beyond benefits to individuals, as well as economies of scale, in the sense that small producers would not be able to produce the goods economically. Further, large private monopolies of essential public services would lead to a concentration of wealth.

Whereas much of this economic rationale still stands, failures of public sector implementation like inefficiencies, corruption and poor targeting have led to powerful international advocacy for hybrid solutions which are said to combine the best of both public and private sectors. It is believed the private sector investment carries the potential

to 'enhance efficiency<sup>3</sup> by increasing competition, strengthening accountability between providers and consumers, decentralising management structure and creating incentives for cost-sensitive consumer and provider behaviour. Private providers can use funds more flexibly, reallocating them as necessary to reap the highest value from any given programme' (Psacharopoulos and Nguyen 1997: 11).

One form of such pluralistic alternatives combining public and private sector effort is what has been described as 'expanding exit options': 'greater use of markets (for) creating competitive pressures and more exit options – alternatives to public provision for users seeking better quality or lower cost' (World Bank 1997: 87).

A second option is of harnessing the resources and energies of the private sector by contracting out service delivery to private firms or NGOs. The contacts may be based on competitive bids or independent performance and capacity evaluations, combined with strong accountability mechanisms to ensure compliance with specified outputs and outcomes. This has been tried out in several countries for a range of services, such as road maintenance (Brazil), management of public schools (Bolivia) and preventive and curative health (Uganda, India).

A third mode of securing public sector participation is the hiring of commercial and other 'contestable' products like telecommunications and electric power generation, their corporatisation and privatisation. It is suggested that privatisation is a solution for poorly performing public enterprises, which are a drain on public resources. But the cautions laid down are the transparency and probity of the processes, winning the support of the employees and establishing effective regulatory mechanisms.

A fourth mode is securing funding from a range of private social and public sources – through direct user fees, insurance, donor agencies, private funds and charitable contributions. The rationale is that it enables sustaining and enhancing investment in human capital and infrastructure, despite tight budgets and the constraints of fiscal discipline.

In its advocacy for user fees in primary education and public health, Psacharopoulos and Nguyen (1997) point out that there are many other spin-off benefits. They argue: 'It may be expected that the more a school depends on private financing through fees collected from students or contributions from local communities, the more likely the school is to use resources efficiently. When people share directly in the cost of a service, they are more likely to monitor costs closely and to guard against waste. Furthermore, private financing at higher levels of education may also provide incentives for students to complete their study programmes more quickly and behave more like investors in selecting their degree' (World Bank 1997: x-xi).

In defining the complementary or competing roles of the public and private sectors in the supply of public goods, an useful distinction has been made between provision and financing (World Bank 1997). It illustrates in tabular form 'possible combinations of public and private provision and financing', to demonstrate 'that the private sector can function as both the financier and provider of social services; alternatively its activities can be restricted to either financing or provision' (World Bank 1997: x).

Table 1

Public/private mix in social service provision and finance

	Provision		
		Public	Private
Finance	Public	Government funding and provision	Government services contracted to private providers
	Private	Government services funded (wholly or partly) by direct user fees, insurance and donor agencies	Private services funded (wholly or partly) by private insurance, direct user fees and donor agencies

Source: Adapted from WHO, 1991.

#### Social Sector Responsibilities

The mainstream paradigm of good governance acknowledges the social sector responsibilities of government for education, health and

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protecting vulnerable groups. However, much of the literature places these goals within the larger context of market-led economic growth, thereby limiting the scope and centrality of these objectives.

The key responsibility of the state in ensuring services such as 'education, health, and essential infrastructure, particularly when such services are directed at the poor and are not forthcoming from the private sector' (World Bank 1992: 6) is mentioned in the literature. This, however, tends to be justified not only as an end in itself but as a necessary condition for economic growth. Human resources development not only enriches people's lives (considered an end of development in itself) but also lays a foundation for long-term economic growth (a means of development)' (World Bank 1997: ix). 'A well-educated labour force and adequate infrastructure are fundamental to the quality of private investment' (World Bank 1992: 6).

The responsibility for 'protecting the vulnerable' is again highlighted in some of the more recent literature, with an increasing acknowledgement that in countries undergoing structural adjustment, there may be adverse, even catastrophic, impacts on vulnerable sections of society. It is acknowledged, for instance, that the epochal transition to market economies in Central and Eastern Europe, has resulted in high unemployment, especially among former workers of state enterprises with lower skills and education, and dramatic declines in GDP up to as much as 40 per cent. In many transition economies, poverty related to unemployment is seen to deepen for some sections, as is inequality in income, capability and security (UNDP et al 1997). The literature speaks of gainers and losers from structural adjustment policies. In one World Bank report the losers are listed as follows:

The losers have often been in urban areas (where services have been hit), in government jobs, and in jobs where protected insiders once earned more than market wages would support. The losers might also include the unskilled, the immobile, and those without access to the new market opportunities – because they lack human capital, access to land or credit, or infrastructure connecting farflung areas.

The losers may also include otherwise viable firms hit by economic crises not of their own making (World Bank 2001: 66).

There is faith, though frequently not adequately substantiated by empirical evidence, that this increased poverty and inequality is a temporary, transitional by-product of structural adjustment policies. The response that is recommended is various social safety nets to protect the vulnerable groups of people who may suffer in the transition to unfettered market economies.

It is speculated that the re-introduction of poverty reduction as a major component of World Bank/IMF policies since 1999 was a response to popular demands for an end to the economic and social damage of structural adjustment programmes (Zaman 2002). The wide range of measures adopted by governments to protect vulnerable social groups are seen to fall into one of two broad categories (World Bank 1997). The first of these are social insurance programmes, which aim to support people who are excluded from the wage economy for some part of their life cycles. This may be the outcome of age or changes in national economic policy or variations in the business cycle or other reasons.

The most common social insurance programmes are pensions or cash incomes for those who are too old to work; unemployment benefits for workers who lose their jobs in state enterprises because of restructuring or privatisation, or are in a transitional phase of changing employment; family assistance schemes; compensation schemes; and health insurance for workers who face loss of short-term income because of health problems.

The more substantial programmes in many countries are of social assistance to the most poor, marginalised and vulnerable social groups. These may take the form of food, housing and energy price subsidies; rationed food subsidies, food stamps and supplemental feeding programmes; labour intensive public works often including a food-for-work-wage component; and credit-based programmes.

Whereas the importance of both social insurance and social assistance programmes is acknowledged, international financial and aid

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agencies are concerned about the fiscal pressures created by large and ambitious programmes in many countries. It is believed that unlike social assistance, social insurance can be substantially self-financing by the association of the private sector and private provisioning. The savings component of pensions should be unbundled and separated from the redistributive component, and the former should be placed in private hands. Mandatory savings for unemployment insurance and pensions are also suggested.

In social assistance programmes, it is recognised that there can be a real conflict between the demands of addressing poverty and fiscal discipline. This is sought to be addressed by better targeting, with broad-based subsidies shifting to means-tested programme and further to self-targeting. A good example of the last is food-for-work public works programmes, with wages low enough to attract only poor workers. There is also some expectation of private funding of social assistance programme through charities and donor agencies.

However, both in theory as well as in practice, this conflict between the imperatives of fiscal prudence and combating poverty has not been adequately resolved. The experience the world over has been that in the process of tightening their belts, national governments frequently cut back on programmes for marginalised people who are politically weak almost everywhere.

#### Accountability and Information

In the initial flush of the sweeping winds of structural adjustment policies globally, it was assumed that all the governments needed to secure growth and development was to get their budget deficits, exchange rates interests rates and dismantled trade barriers right. This came to be known as first-generation reforms. But even the IMF now talks of 'second-generation' reforms, focussed on transparency, accountability and reduced corruption (Palley 2002). The mainstream literature on good governance is increasingly replete with concerns for strengthening the accountability of governments, making governments more open and ensuring citizen voice in public decision-making. The underlying belief is that

'governments are more effective when they listen to businesses and citizens and work in partnership with them in deciding and implementing policy' (World Bank 1997: 10).

Accountability means holding governments, and more specifically public officials, responsible for their actions. At the broadest political level, accountability of political leaders is enforced by the contestability of political power, mainly through the ballot box. Most governments also have formal, internal, hierarchical systems of accountability of public officials, to higher levels in the administrative and political hierarchy, to specialised agencies like audit, Parliament and frequently to an independent judiciary. The World Bank in its 1991 Governance Report (World Bank 1994) describes this as macro-level accountability. The experience with legal accountability has been mixed but internal administrative controls have been frequently ineffective. In such forms of hierarchical control, political leaders, government agencies and public officials act as proxies to the public, but real accountability is compromised by frequent collusion between supervisory and subordinate functionaries. Another limitation is that 'the focus in public accountability tends to be on inputs, especially public expenditure, rather than on outputs or effects, which are often diverse and complex to measures' (World Bank 1992: 14).

Increasingly, the focus in the discourse – though far less in practice – has shifted to what the Bank describes as micro-level accountability, or accountability directly to citizens, their organisations and businesses. This is necessitated by the manifest failures of both the institutions and practices of macro-level accountability, which have further become increasingly unwieldy and unfeasible as the state expands its reach and functions. Client surveys, citizens' charters, independent ombudsmen and people's audits, are some instruments of micro-level accountability that have been operationalised in countries like India, Tanzania, Nicaragua and Malaysia.

It is also increasingly recognised that information is power, and public authorities derive illegitimate power by monopolising public information, through secrecy and opaque decision-making. Public decision-making by public functionaries behind closed doors greatly enhances the scope for corrupt and arbitrary exercise of public office. Right to information legislation, the direct participation of people in the planning and implementation of government programmes through deliberation councils and people's committees, and broadbased public discussion of key policy directions and priorities, together carry the potential to establish a climate of openness and transparency in public affairs. This applies equally to the corporate sector and NGOs.

We have already observed how public-private competition, deregulation, contracting out of services to multiple private providers, and exit mechanisms are also seen as ways of securing greater accountability and choice of citizens.

#### **Critical Assessment**

In attempting a quick critical assessment of the dominant contemporary neo-liberal paradigm of good governance, this paper will not attempt to assess the actual impact of structural adjustment policies in various countries, nor will it appraise the actual performance of the World Bank, IMF and international aid agencies in practising and promoting the principles of good governance enunciated in their 'second generation' reform package of accountability, transparency and participation. The effort, instead, would be to evaluate the ideas themselves, and where limitations are encountered, to suggest the outline of an alternative blueprint.

#### Governance: 'Good' for Whom?

In the torrential impact of structural adjustment policies and the rapid global integration of national economies, it is the national sovereignty in economic decision-making that has, without significant resistance, collapsed in most countries. There has also been a rapid standardisation in the world of ideas, with academic institutions and funded development organisations reproducing and recycling essentially the same concepts, the same diagnoses and remedies, to address the problems and needs of diverse people in vastly varying situations across the globe.

One of the most influential among the bunch of ideas from this global assembly line of received wisdom is the notion of 'good governance', the major elements of which this chapter has sought to summarise in the first section. The normative adjective 'good' is sometimes wisely replaced by somewhat less prescriptive appellations like 'sound' or 'effective', but the underlying sentiment remains that there is a 'one size fit all' notion of desirable public policies, which will (given time, because the possibilities of short and medium-term difficulties are acknowledged) benefit all people in all situations in all countries of the globe.

It would be fair to say that the analysis and prescriptions are sometimes nuanced. World Bank (1992), for instance, acknowledges the role of culture in shaping institutions and rules. It, however, suggests the possibility that as the market economy progresses, cultural differences would diminish. Despite the vast differences in the circumstances of different countries at different times, the *World Development Report* of 2001 takes satisfaction in noting that market-oriented reforms have been widespread, though uneven, throughout the developing world.

It is perilous to regard 'good-governance' to be a politically neutral category, requiring merely a package of institutional reforms, economic policies and techno-managerial interventions (Arora 1999). The problem is not just with suggesting that a common set of policy prescriptions would be beneficial to countries of such enormous political, economic and historical diversity. Possibly even more problematic is the implied suggestion that what is 'good' governance for one section of the population would also be 'good' for all others. What is good for business – and indeed, even within this, for international capital and the large, formal sector – is assumed to be good also for poor and socially disadvantaged people, for farmers and workers, for small informal local producers, for women, for children, for indigenous populations, for minorities, for persons with physical or social disabilities and so on.

If we unbundle this belief, it is premised on a number of axioms. The first of these is that structural adjustment policies that unfetter the market, rein in government spending, secure macro-economic stability, and liberalise trade and investment, always lead to enhanced economic growth. The second is that economic growth is synonymous with development. The third is that economic growth would benefit all sections of people, including impoverished and socially marginalised groups.

In subsequent sections, I will attempt to evaluate these axioms. At this stage, it is enough to propose an alternate premise. This is that in a situation of social, economic and political inequality, it cannot be assumed that what benefits one social group will intrinsically benefit others. For example, uncompromising labour standards may benefit workers, but would be opposed by employers.

I therefore start off with a premise that governance is 'good' only to the extent that it benefits the social groups who are most impoverished and socially vulnerable. There may be some elements of governance that may benefit all sections of a society, and if these are identified and demonstrated, they would be supported. But in the event of a conflict of interests, if a policy, law or governance practice benefits one section of the population and harms another, then only that policy, law or practice would qualify as 'good governance' which benefits sustainable sections of society which are most poor and vulnerable.

## Problematising Development as 'Growth' and Poverty as Economic Deprivation Alone

There is considerable empirical evidence to establish that structural adjustment policies do not always lead to economic growth. Palley (2002) and Singh (1999) show (see Table 2) that cumulative economic growth across the world has decreased in the phase of neo-liberal domination (1990–1996), as compared to the period 1980–1989, which in turn was even slower than the period 1965–1980. This slow-down has been even more marked in low and middle-income countries. Not only has there been a deceleration of growth in the era of structural adjustment, there has also been heightened inequality within and between nations (Denninger and Squire, 1996; Milanovic. 1999; Lusting and Deutsch, 1998; Palley, 2002).

Table 2
Trends in GDP growth for developing and industrialised countries,
1965–1996 (average annual growth, in percentage)

	1965–1980	1980–1989	1990-1996
Low and middle income countries	5.9	3.1	1.9
High income countries	3.8	3.2	1.7
US	2.7	3.0	2.5
Japan	6.6	41.0	1.2
World	4.1	3.1	1.8

Source: Singh 1999 in Palley 2002

However, this empirical investigation is outside the scope of the discussion here. What is relevant for more incisive scrutiny here is the assumption that economic growth necessarily leads to development and a reduction in poverty.

The Human Development Report 1994 defines sustainable human development as:

Sustainable human development is pro-people, pro-jobs, and pronature. It gives the highest priority to poverty reduction, productive employment, social integration, and environmental regeneration. It brings human numbers into balance with the coping capacities of societies and the carrying capacities of nature. It also recognises that not much can be achieved without a dramatic improvement in the status of women and the opening of all opportunities to women (UNDP et al 1997: 4).

Even a mere reiteration of this now widely accepted scope of the meaning of 'development' would reflect how economic growth may in some circumstances contribute to some aspects of development but retard others. It may, for the sake of argument, contribute to enhanced productive employment (although the empirical evidence from many transition economies reflects a reverse trend, with higher unemployment levels). However, it may at the same time conceivably disrupt social integration and the environment. There is, therefore, even theoretically, no neat congruence between economic growth and development.

Since the avowed purpose of 'good' governance in the alternative paradigm proposed in this paper is to sustainably improve the lives of poor and marginalised people, it may be useful to examine more closely the notion of poverty and the potential of economic growth to combat and eliminate it.

Poverty is an extremely complex phenomenon, which manifests itself in a dense range of overlapping and interwoven economic, political and social deprivation. These include economic deprivation in all its forms – assetlessness, low income levels, hunger, poor health, insecurity, physical and psychological hardship, social exclusion, degradation and discrimination, and political powerlessness and disarticulation. It may be transient, as during sudden natural disasters, or chronic and persistent over time.

Both among planners and academics, there has been considerable preoccupation with defining and measuring poverty (Chambers 1990) distinguishing between poverty defined to cover a range of economic, social and political conditions of deprivation, and what professionals actually measure in their assessments of poverty. They argue that the latter are measures not of deprivation in many of its aspects, but only one or two elements of income and consumption. They find that this grave lapse is not merely an academic failing; it also has serious implications for policy. Policy instruments are themselves designed to address poverty mainly as narrowly defined by professionals, to the grave, indeed fatal neglect of its larger and complex social and political dimensions, and of the aspirations of the poor. They persuasively argue, on the basis of empirical research, that the actual aspirations of the poor are for 'survival, based on stable subsistence; security, based on assets and rights; and self-respect, based on independence and choice' (Chambers et al 1990: 13).

The complex and interweaving phenomena of poverty and marginalisation have been understood in many contrasting ways by academics and planners. Some of the most influential theories have attempted to understand poverty in terms of expropriation by the exploiting classes of legitimate control over the means of production by the working classes; or as low income flows and consumption.

Other studies have focussed variously on deprivation and poor standards of health, education and other social services; social exclusion, degradation and discrimination; insecurity, physical and psychological hardship; and political powerlessness and disarticulation.

Feminist and civil rights movements in the 1970s and 1980s highlighted the burdens of patriarchy, racism and ethnic discrimination, and helped us understand deprivation that is distinct from mere consumption denials. Collins writes of interlocking systems of oppression (1991: 225) that exist involving race, class, gender, age, sexual orientation, religion and ethnicity. She could have added caste and physical abilities. A person maybe 'penalised' on some axes, but 'privileged' by others, e.g. white women are penalised by their gender but privileged by race. She sees the matrix of interlocking axes of oppression but the overarching relationship is of domination.

Sen's (1992) most important contribution to the subject is to shift the understanding of poverty and deprivation away from low utilities, and also low incomes (or more generally low holdings of primary goods and resources), and instead bring to centre-stage choice and freedoms. He regards his emphasis on the importance of choice in the value of living as part of a long tradition, which includes Aristotle and Marx.<sup>4</sup> His quotation from Marx in this context is interesting. Marx emphasised bringing 'the condition for the free development and activity of individuals under their own control'. In his celebrated vision, the liberated future society would 'make it possible for me to do one thing today and another tomorrow, to hunt in the morning, fish in the afternoon, rear cattle in the evening, and criticise at night, just as I have in mind, without ever becoming hunter, fisherman, shepherd or critic' (Marx 1947).

Sen states that what is very important for assessing a person's situation is the real freedom that she/he enjoys to do this or that. He further maintains that resources or primary goods like income are very imperfect indicators by themselves of this freedom. Instead, to make such an assessment, we must look at the real choices a person has. According to Sen's schema, a person's well-being may

be seen in terms of a set of inter-related functioning. These can vary from basic functioning, such as having enough food and shelter, to more sophisticated ones such as achieving self-esteem and contributing to the community. A person's capabilities represent the freedom to achieve functioning that she has reason to value, or in other words to achieve the kind of life to which she aspires. Primary goods like income are possible means to achieve freedom or well-being, whereas capabilities are the substantive freedoms that a person enjoys to pursue valued life-plans. In this sense, capabilities represent real choices.

One major set of factors leading to marginalisation is economic, mainly lack of control over the means of production – land, capital, natural resources, credit and so on. But a large number of disabilities are also social and cultural, related often to stigma and prejudice. Thus, for instance, a person with leprosy, which is today medically fully curable, is routinely denied contact with her immediate family and community, and the right to work. Examples, when such chances have been restored, reveal, if such revelation was necessary; that they are capable of at least as much productive work as a comparable person without the stigma.<sup>5</sup>

Often marginalisation is also the direct outcome of state policy itself. To take a few examples, there is often no legal recourse by which very poor persons in a city in India can obtain shelter, therefore, they are pushed into a twilight zone of perennial insecurity and criminalisation. People displaced by big development projects are also marginalised as the direct outcome of state policy. The point that is being made is that the apparently low capabilities of very marginalised groups do not arise frequently from their own intrinsic and irrevocable biological infirmities, but in fact in many cases, these infirmities are externally imposed, by social arrangements themselves.

There are some echoes of this idea in some of the recent literature on social exclusion. However, as pointed out by Kleinma (1998), 'the term (social exclusion) is rapidly becoming a cliché to cover almost any kind of social ill'. Beall and Clert (2000) point that the reason for this wide and less than rigorous application is that 'in its colloquial

and political usage, the concept of social exclusion has tremendous resonance and is very compelling'.

In the context of the UK, Levitas (1998) identifies three mainstreams in the discourse on social exclusion. One she describes as a moral underclass discourse (MUD) which stigmatises the excluded on the basis of their alleged moral and behavioural delinquency. The irony in that there are echoes of this discourse not only in middle class India but also in its law and policy. A second line of discourse called the social integrationist discourse (SID) regards the unemployed as excluded. Her third category, and the most relevant for our purposes, is a redistributive discourse (RED), which in the context of post-industrial societies is mainly concerned with the problems of poverty amidst plenty.

I find a much more useful perspective on social exclusion to be what Beall and Clert call 'transformationalist'. According to this perspective;

Whereas concepts such as poverty, vulnerability, deprivation and inequality do not impute causality, a social exclusion framework implies not only that a person or persons are being excluded but that someone or something 'is doing the excluding' (De Haan 1998). This points up another key dimension of the social exclusion perspective, as we understand it and that is that it is *relational*, deriving from social relations, invariably founded on differences in status or power (Beall and Clert 2000).

Similarly, the word marginalisation suggests that there is a core and a periphery and that 'marginalised' people are those who are actively blocked access to the core. The importance of these perspectives is that poverty is not perceived to be a mere attribute of certain categories of people. Instead, it is seen as something that is actively *done* to people. It is not what they are but what they have been made. It is interesting that the ex-untouchables of India have discarded the appellation given to them by Gandhi – *harijan*, meaning children of God – which they regard as patronising. They prefer *dalit* – which means one who is crushed – because the term implies that they have been oppressed, and it has therefore, acquired a cultural context of

**▶**(25)

assertion and anger. In this sense, the terms exclusion and marginalisation are useful.

Upendra Baxi (1988) rejects the words 'poverty' and 'poor', because they are passive and tend to normalise what ought to be centrally problematic. He substitutes the word 'impoverished' because 'impoverishment is a dynamic process of public decision-making in which it is considered just, right and fair that some people may become or stay impoverished. These decisions are made by people who hold public power; and it is a mistake to think that only politicians hold this power, although they manifest it supremely and dramatically. Judges, bureaucrats, economists and other human science specialists, mediapersons and public opinionators, activists and intelligentsia, among others' (Baxi 1988: vi). According to him, 'both the state policies and our innumerable daily actions decide who, how many, to what extent, for how long, and with what cost shall become or remain impoverished' (Baxi 1988: vii). If impoverishment is indeed this active process of denial, its reversal is equally dependent on a strong and dynamic state intervention.

A set of economic prescriptions or governance agendas which revolves on the central axis of economic growth is clearly inadequate to address issues of multi-faceted poverty and challenges of development. It cannot address social exclusion or discrimination; it does not automatically expand a person's capabilities, or substantive freedoms, or real choices.

Finally, economic growth measured in terms of enhancement of per capita GDP, reflects only the production of more (monetised) goods and services within the economy. Surely more goods and services in a country do not automatically lead to greater well-being of its citizens. Much more important than how *much* is produced, are questions such as:

• What is produced? Are they, for instance, luxury goods based on spurious needs manufactured by advertising or planned obsolescence, or goods that are intrinsically destructive, like arms and narcotics? Or are they basic needs that ensure the equitable survival and well-being of all citizens?

- ✦ How are these goods produced? Do the techniques of production displace or alienate workers? Do the technologies pollute rivers and the air, or cut forests? Or is the production labour-enhancing and environmentally sustainable?
- ◆ For whom are these goods produced? Are they accessible only to a small segment of people who have the capacity to pay, or political and social power? Or are they accessible equitably to those who automatically need them?

This section, in summary, challenges the basic assumptions of the neo-liberal perspectives on good governance. It argues that even if enhanced economic growth is guaranteed by structural adjustment policies, economic growth does not automatically result in sustainable human development. The trickle- down effect seldom takes place and hence, it does not automatically reverse poverty, which is much more than income and consumption failures. It does not intrinsically expand human capabilities and substantive freedoms. More important than how much is produced, are questions of what is produced, by what means and for whom.

#### Revisiting the Role of the State and of Markets

An article of faith in the neo-liberal 'good governance' agenda is a retreating state. This section will argue that strong, activist but accountable states remain critical to the interests of poor and marginalised people.

The state has been defined as a set of institutions with the legitimate powers of coercion and a monopoly over binding rule-making. These powers are exercised over a defined territory and population. Throughout history and across continents, states have variously assumed responsibilities for defence, taxation, resolution of conflicts and for providing basic public goods like roads and irrigation.

However, the notion of an overarching powerful, interventionist state for promoting development and welfare is of relatively recent origin. The turning point was the epochal Russian Revolution of 1917, which abolished private property and adopted centralised planning of all economic activities, which was avowedly coercive because of the class

character of the state. In the imperialist capitalist world, the traumatic decade of the Great Depression exposed, with its burden of human tragedy, the enormous vulnerability of market economies and the great human costs that they entailed. This led states to widely adopt counter-cyclical economic policies to revive economic activity and prevent such market failures in the future.

The end of the Second World War saw a number of countries emerging from colonial bondage. The aspirations of large emancipated populations for economic freedom and prosperity to build on their newly acquired political freedom led to large popular pressure for active state interventions for equity and growth. In many industrialised countries, the expansion of private wealth was combined with a large consensus for social insurance and welfare benefits to persons excluded for a variety of reasons from the workforce. The unrivalled performance of the welfare state in Sweden led the state to grow to nearly twice the size of that in the United States by 1995, in terms of both spending as a share of income and public employment as a share of the population (World Bank 1997: 22).

The global turning point, once again, was located in the Soviet Union, but this time in reverse, as centralised state capitalism collapsed in the late 1980s. Faith in development and social justice goals delivered by robust centralised states soured and somewhere along the way, the social justice goals themselves became devalued. Fiscal pressures and political right-wing governments in the North led to a retreat from the consensus on wide-ranging welfare obligations of the state. In countries of the South, burgeoning, unaccountable, corrupt states failed to deliver on their promises of both equity and growth. Unwise fiscal policies and crippling external debt burdens added to the woes of populations in many countries, who were often caught in the throes of economic crises, runaway inflation and internecine civil wars.

Amidst this pessimism and despair, the ground was fertile for a dramatic transformation in the political economy of states worldwide. Considerations of equity and national economic sovereignty receded, as 'states for globalised markets' became the new mantra. In a world transformed so profoundly – and some would believe irrevocably –

in the space of just one decade before the turn of the last century, it may appear incongruous to raise some fundamental questions about the role of the state, from the perspective of forgotten people, impoverished, excluded, oppressed. But it is from precisely the perspective of these women and men, boys and girls, that this chapter aspires to re-evaluate governance, and the role of the state.

It is true that the experiment of centralised state planning for growth and equity appears lost in the rubble of the Berlin Wall. Likewise, state activism in countries of the South did not measure up to the needs and aspirations of its deprived populations. However, the inference that is so influentially being promoted does not automatically follow, that interventionist states were not needed nor that vulnerable people must depend on markets and the private sector to redeem their lives, standards and secure to them social justice. If stubborn and pervasive impoverishment and social discrimination are to be addressed, it cannot be assumed that this will be achieved by mainstream economic policies that either aggravate or are at best neutral to the problem, with merely the subsidiary adjunct of antidotes of social insurance and social assistance.

Even in the era in which they were perceived as central to state responsibility and from which governments derived both their legitimacy and popularity, these social assistance programmes could not make an adequate dent on poverty in most countries. At a time when these programmes have been relegated to the periphery of political and economic discourse, and funding has been cut back under the impact of fiscal austerity, they are even less likely to make an impact on poverty.

To actually dismantle the legacies of impoverishment and discrimination, not only does this have to be reclaimed from the periphery to which it has been exiled to become the core of government action in these countries; it also requires strong redistributive measures like land reforms, poor communities, access to and control of forest and water resources, food and work as legal entitlements, budgetary re-allocations to benefit poor people, legal and judicial reforms for the poor, and their access to mainstream

financial resources. None of this can be left to markets and all of this requires vibrant, strong, interventionist states with high legitimacy, authority but also genuine accountability.

In an illuminating debate about the appropriate role of the state in the context of liberalisation in India, Dreze and Sen (*ibid*) argue that it is not a question of more or less government but of the type of governance to have. They stress its role mainly in advancing human capabilities and effective freedoms, not merely as a means to greater economic growth but because human beings should be valued as ends in themselves, and the advancement of human capabilities should be the objective of social and political organisation. The specific agenda that they recommend includes expansion of basic education, health care and social security, population policy, land reform, local democracy, women's rights, sound environmental policies and a credible legal system (Dreze and Sen 2001: 190). Justifying their plea for social security, they write:

It is difficult to claim that all human beings have equal rights in any substantial sense while all the streets are full of unemployed labourers, hungry children, destitute beggars, abandoned widows, and forsaken victims of dreadful diseases (Dreze and Sen *ibid*: 99).

The other face of the same coin of the argument for the retreat of the state, is the premise that markets are reliable agencies not only for economic growth, but even development, public services and the combating of poverty.

There is arguably still no better critique of the role of markets than in Schumacher's seminal work 'Small is Beautiful' with its still incomparable subtitle 'A Study of Economics As If People Mattered 25 years later' (Schumacher 1977). He argues that markets are the location where willing buyer meets willing seller. The market places have no responsibility on the buyer, except to secure the best bargains. The buyer has no responsibility to consider the origin of the goods or the conditions in which they have been produced, whether they use non-renewable resources or displace poor producers. It places no value on beauty, health or human suffering. The market is

according to him, the institutionalisation of individualism and non-responsibility. Neither buyer nor seller is responsible for anything but himself (Schumacher 1977: 40). Hence, in his view it cannot yield comprehensive, sustainable public good.

The pricing of public goods, such as health and education, who lack the capacity to pay or are otherwise excluded from markets by social barriers (e.g., widows, persons with HIV and leprosy, persons with disabilities, street children, sex-workers, etc.).

Moreover, it would build in incentives for health functionaries to stress curative health, to the neglect of preventive and promotional health which are much more significant for poor people. The pressure on public bodies supplying social goods to be economically viable and even more their transfer to the private sector, results in the jettisoning of unprofitable but socially useful elements of their products. A transport company, under pressure to expand profits, would abandon less economically viable routes which may be serving underprivileged groups in remote regions.

#### Rule of Law or the Rule of Justice

In the earlier section I have noted that rule of law is perceived to be an essential feature of good governance. In this section, I will argue that from the perspective of poor and marginalised people, law may in fact damage their interests and for them, justice rather than the rule of law is the critical need.

It may be recalled that the survey commissioned by the World Bank (World Bank 1997) of business establishments in 69 countries identified the 'lawlessness' syndrome as a major stumbling block to private investment. High levels of crime against property and person, weak enforcement of contracts, and an unpredictable judiciary combine to create an insecure and uncertain economic environment. A high premium is therefore placed on establishing a foundation of law that protects property rights and maintains public peace, and a fair and predictable judiciary.

On the surface this may seem unexceptionable because it seems reasonable to assume that the rule of law automatically yields justice. In reality, this may not always be the case, and in some instances, even the reverse may be true. The law in a market economy is expected primarily to protect property rights. But what about the rights of people without property? The neo-liberal project in many countries contains an essential component of diluting worker protection laws, whether in terms of job security or statutory minimum wages, because this is seen as an impediment to investment. Even property rights are selectively protected because land acquisition laws that enable the state to expropriate private lands for large projects are upheld.

The dissonance and even the chasms that may exist in a variety of ways between the rule of law and the securing of justice, will be illustrated in this section with the specific example of India. India is a country that prides itself on a rich tradition of constitutional governance and the rule of law, a powerful and independent judiciary, and a rich body of progressive pro-poor legislation. There is, however, a large body of empirical evidence to illustrate that law may act against justice in several ways: (a) Some laws are themselves anti-poor; (b) Laws may be neutral, but their enforcement acts against the poor; (c) Pro-poor laws are selectively not enforced. Each of these categories will be illustrated from the experience of India.

Criminal law in India is codified in the Indian Penal Code, 1860. It is significant that more than 58 per cent of the total number of sections in the Code are devoted to crimes against property and person (Gaur 1988: 66). Gaur notes that impoverished people are grossly over-represented in prison populations and offenders. A major reason for this is that the Code of Criminal Procedure, 1973, provides for release of a person from jail during trial after executing a bond or surety for a certain sum of money fixed by the Court. Gaur argues:

The entire system of monetary bail is anti-poor since it is not possible for a poor man to furnish bail because of poverty. In other words, the accused with means can afford to buy his freedom, but the poor accused who cannot pay the price languishes in jail for weeks, months and perhaps even for years as an undertrial prisoner. He stays in jail because he is poor and not able to purchase the heavy cost of freedom

from jail. Poverty prices them out of freedom and is a crime in itself (Baxi 1988: 78–79).

Monetary bails and unending trial procedures have combined to ensure that more than 70 per cent of the inmates in the overcrowded jails of the country have not been convicted of any offence. The unconscionable conditions of these undertrial prisoners for the first time came to the note of the Supreme Court of India in *Hussainara Khatoon v. State of Bihar.*<sup>9</sup> But still the situation remains substantially unchanged. While granting freedom for undertrials who had spent virtually their whole life awaiting trial, the Court observed:

It is a travesty of justice that many poor accused are forced into long cellular servitude for little offences because the bail procedure is beyond their meagre means and trials do not commence and even if they do they never conclude. (Baxi 1988: 81)

To take a few more examples of anti-poor laws and procedures in India, preventive detention and vagrancy laws enable state authorities to routinely pick up people off the streets and incarcerate them, merely because they are very poor. Laws against begging define begging so widely as to include all very poor people on the streets, and summary trials provide for harsh penal retribution for the 'crime' of begging.

There are many legal barriers to the livelihoods of the poor, which criminalise the livelihoods of small producers. In most countries of the South, under the influence of international lending and aid agencies, there has been a major sustained and systematic operation to dismantle the regulatory regime that is seen to shackle capital investment, growth and enterpreneurship. But typically in most of these countries, there has been little or no effort to dismantle controls that shackle the small rural producer or artisan.

Let us take a few examples from India, where during the last decade, large industry has been rapidly exempted from regulations but deregulation has made almost no impact at the district and village level. One can set up an industry worth billions of dollars in India without any licence today, but a farmer can neither set up a brick kiln unit

nor a rice shelling plant nor a cold storage and cannot even cut a tree standing on his own private field, without bribing<sup>11</sup> several officials. Thus poor people are prevented from creating value addition through processing and storage, and accessing the right to get the best price for their produce (Saxena 1996).

A second set of examples relates to the systematic criminalisation in most countries of the most vulnerable categories of people like homeless people, street children, sex workers, mentally ill persons, and so on. Laws tend to treat the victims of societal and state neglect and abuse as being not only responsible for their situation but criminally responsible.

The compulsory acquisition of land for public purposes and for public sector or private sector companies displaces people, forcing them to give up their homes, assets, means of livelihood and vocation and to reside elsewhere and start their lives all over again. It has been a major reason for pauperisation of affected families, frequently leading to loss of livelihood and ultimately to a state of shelterless, assetless destitution. The presumption that displacement is an inevitable consequence of all development efforts needs to be reassessed in the light of the enormous cost of human suffering of such projects.

Even for laws that are not adverse or are even positively designed to assist poor and marginalised people, enforcement and legal procedures frequently block their access to justice. Respected legal scholar and social activist Vasudha Dhagamwar carefully documents the unfolding of some criminal law cases and concludes that 'the legal system in India is totally opposed to change. It is heavily weighted in favour of the rich, not because the laws are so made but because the men who man the judiciary, the police, the jails and the administration are implacably anti-poor' (Dhagamwar 1988: 125–126). It is not just the bias of the presiding officers of the court, the procedures too are so tardy, opaque and expensive as to throw them beyond the reach of poor people.

I will conclude this section by quoting extensively from the Gujarat Legal Aid Committee notes (Baxi 1988), which point out that formal 'equality before law' is unlikely to yield justice in situations of vast social and economic inequality: 'Equality of justice requires first, a fair and just substantive law and secondly, an even-handed administration of that law... Ehrlich suggests that *de jure* equality may actually accentuate *de facto* inequality. He argues that "the more the rich and the poor are dealt according to the same legal proposition, the more the advantage of the rich is increased". This kind of discrimination is far more dangerous because it is not so apparent and easy to detect except when its consequences are analysed in the light of sociological data. Inequality in such cases stems from a failure of the law to take into account the differential capacity of the rich and the poor to avail of the benefits which the law provides (Menon 1988: 351).

The report illustrates this with the law of contract: "There is so much inequality in the bargaining power that the poor are especially disadvantaged as against the rich. They lack information, training, experience and economic resources to bargain on equal terms with those who are more fortunately placed. But justice stands blindfold, equally indifferent to the identity of either party, and in the result it is the stronger which is able to tip the scales. In such circumstances, equality before the law is only an illusory equality and the very neutrality of the law becomes an instrument of inequality, for it differs to the power of the strong party" (Menon 1988: 351–352).

#### Features of Just Governance

This section will attempt to reflect on the principles of a just society, especially in terms of its greatest relevance to people who are most poor and marginalised in society. It will do this because of a conviction that the justice of any set of social arrangements must be assessed primarily in relation to those within that society who are with least power.

We will take as our point of departure what is assessed by many observers as the most significant theory of justice of the twentieth century, at least in the western liberal democratic world – John Rawls' theory of justice (1971). Rawls regards justice as 'the first virtue of social institutions, as truth is of systems of thought'.

His idea of 'justice as fairness' is based on the fiction of a social contract. He suggests that if a group of rational citizens were brought together to negotiate a system of social arrangements, the outcome would be most fair and therefore, just, as rather than if the deliberations were undertaken behind a temporary veil of ignorance. According to his device, the deliberants would suffer (or benefit from?) a temporary amnesia, in which they would lose memory of what their place in society and special interests were. He feels that this would eliminate both envy and altruism and rule out morally irrelevant considerations such as class, gender, parentage or race. The presumable consent of such disinterested rational people behind the veil of ignorance would, according to Rawls, yield the principles of an ideally just society.

He arrives at two fundamental principles which he suggests that rational men and women, behind the veil of ignorance, would select in their own self-interest. The first, and prior principle, is a rather pure form of egalitarian liberalism which requires that everyone be provided with the basic conditions for the realisation of her/his own aims, regardless of the absolute levels of achievement that they may represent. The second (the 'difference principle') permits only those inequalities in 'primary goods' such as income, wealth, power and other resources that are for the absolute benefit of everyone, and in particular, the worst-off. For such inequalities to be permissible, another condition that he lays down is that they must be attached to offices and positions open to all, under conditions of fair equality of opportunity.

Because of its wide influence, this theory has been subjected to extensive and searching criticism. The most important, in my view, is that even if it is accepted that people would rationally have entered into the hypothetical contract, it is still not sufficient moral ground for regarding it to be the most just. <sup>12</sup> Justice cannot be arrived at merely by the consensus of rational people seeking their respective self-interests, even from the supposed impartiality imposed by ignorance of their specific situations. Justice is an ethical category, not merely the automatic outcome of detached, collective self-interest.

The presumptions about rationality themselves are problematic. Rawls regards primary goods as things any rational person would desire. But there is no basis for a belief that human nature is fundamentally self-seeking. There is a whole body of philosophical thought and practice world-wide which incorporates an alternative rationality, in which income and wealth, even social standing, may be undervalued. It cannot also be presumed, as Rawls seems to, that people rationally seek only their self-interest. By contrast, Sen (1992), for instance, appropriately refers to a useful distinction between freedom to pursue one's own well-being and what he describes as the 'agency aspect' of a person, of seeking goals and values other than one's personal well-being. There may be, and often is, a conflict between well-being and agency freedoms. I may choose to sacrifice my own well-being in the pursuit of greater goals of justice and humanity. An ethical investigation of justice should admit the latter as a legitimately rational, morally relevant choice.

Even if other forms of temporary ignorance may be admitted, in a similar tenor, Nagel<sup>18</sup> questions the deprivation of knowledge of the deliberants in the presumed social contract of their particular conception of the good. He states that '(i)t seems odd to regard that as morally irrelevant from the standpoint of justice'.

In a Marxist critique of Rawls' ideas, Richard Miller<sup>14</sup> argues that there is no social contract that the best-off and the worst-off will acquiesce in, except as the result of their defeat in the class struggle or a tactical retreat to preserve long-term advantages.

Similarly, from a feminist perspective, Dolovich<sup>15</sup> says that Rawls seeks a conflict-free vision of justice, of justice without politics.

Looking at the issue from the specific perspective of the most marginalised people (and I shall argue that it is precisely this perspective which is most relevant in any discussion of justice), at the heart of the problem is Rawls' unwillingness to acknowledge the implications of both human diversity and social difference. In Rawls' view, citizens are independent, healthy, 'rational and able to manage their own affairs'. <sup>16</sup> O'Neill (1989) points out that such an idealised

view implicitly regards those who do not measure up to this standard as 'defective or inadequate'. Barry (1989) suggests that Rawls' definition of the just society as 'a co-operative venture for human advantage' implies that 'justice is owed only to those who are capable of being just in return', or those who stand to contribute the most to the overall social product. Dolovich (1993) sees in this the explanation of why Rawls' definition of the relevant moral agent in the social contract excludes the very young, the ill, the physically or mentally disabled. As Kymlicka (1990) affirms, when justice is defined this way, 'those who fall outside the web of justice are those who, in our everyday morality, have the most urgent claims on justice'.

It is significant that the liberties which Rawls' presumed social contract seeks to guarantee are mainly political freedoms, such as the right to vote, freedom of speech, assembly, movement and protection against arbitrary arrest. He allows that in particularly dire conditions of bare survival, it may be a rational choice to sacrifice these liberties for ensuring basic survival. But he believes that once these most basic survival needs have been met, people would most value their freedoms without abridgement.

I have no disagreement about the relevance of these democratic freedoms even to the most marginalised people. In fact, these freedoms need to be seized if they do not exist, and their frontiers extended if they do. In a now celebrated conclusion, Dreze and Sen (1995) point out that despite a much poorer record of reducing inequalities, India's achievements in addressing famines are far superior to those of China. This they regard to be primarily because of the influence of a free press and a vigilant political opposition.

However, as observed in the previous section, the most fundamental human freedom is the freedom to make and implement one's own life-plans, and it is this that is positively denied by social arrangements that render people powerless and marginalised. Even in a situation of liberal democratic freedoms, this most essential freedom can still be denied to some sections of the population, with deeply debilitating results.

It then appears futile to base a theory of justice on the presumed – and depoliticised – consensus of all members of society. For a theory of justice, rather than seek a consensus of shared allegedly rational self-interest of all members of a society – even using the device of temporary ignorance of one's situation – it would be, in my view, more useful to begin instead with an unambiguous acknowledgement of existing inequalities in society. There will generally be some groups which through unequal access to resources or primary goods, and others who through the strength of their organised assertion, are able to secure the substantive freedom and power to make and implement their own life-plans. There will be, on the other hand, other groups and categories of people who are denied this power because of low access to resources, low levels of organisation, biological disadvantages, and the positive denial by social arrangements of their capabilities for real choices about their own lives.

Young (1990) argues that by implicitly denying difference, theories of justice in modern political theory tend to 'reduce political subjects to a unity and to a value commonness or sameness over specificity and difference'. The also believes that our understanding of justice should begin instead with an acknowledgement of 'difference' in social arrangements, such as of class, gender, colour and age, and therefore, centre on concepts of domination and oppression. Where social differences prevail, and some groups are privileged and others oppressed, social justice requires to explicitly acknowledge and attend to these differences to overcome oppression.

Mouffee (1992) goes further than Young's rejection of a public realm in which people leave behind a particular group affiliation for a presumed common good. She argues that groups, however disadvantaged, would best achieve the ends of justice, by fighting not for private interests but for justice itself. Her notion of radical democratic citizenship is founded on the common recognition by different groups – be they women, workers, blacks, gays, ecological or new social movements – struggling for an extension and radicalisation of democracy for which they have a common concern. Such a citizenship would construct a common political identity that

would create the conditions for the establishment of a new hegemony articulated through new egalitarian social relations, practices and institutions.

It is my argument that in any set of social arrangements which admits any kind of inequality, the justice of this must not be judged from the perspective of the whole society, by any real or presumed social contract. Instead, it should be judged unambiguously from the position of those who are least able to influence society. The justice of any set of social arrangements will be directly proportional to the extent that it will enable those who are least able to influence society, to acquire and use the substantive freedoms, to build their own lives in the way that they aspire. This is even more pertinent because empirically a great deal of the lack of freedom and power of these groups is the direct result of the denial of these freedoms by social arrangements themselves.

The greater the justice of a set of social arrangements, the more it would add to the substantive freedoms, enable real choices, and genuinely empower those individuals and groups who are least able to exercise influence on these social arrangements. A just society is one which would in a real sense ensure power over their own lives to every individual member, even those who start off from a position of least power.

It may be argued that, it is theoretically conceivable that social arrangements may be so constructed as to admit of no inequality. In such a society, the device of a presumed consensus in a social contract representing all members of society is conceivable because of the homogeneity of interests, and if this is the case it may represent the highest form of a just society. But, as Hare (1975) argues in a densely reasoned critique of Rawls, members of the hypothetical assembly in the presumed social contract, would still necessarily exclude animals, earlier or later generations, or those who existed but are not born (such as who die as foetuses).

Restated in terms of the present discourse, apart from marginalised human beings who are rendered powerless to influence social arrangements in their favour, there are other important groups who have a crucial stake in these social arrangements, but who are again without power to influence them. Most important among these are animals and other living creatures to whom this planet belongs as much as to the human species; and future generations whose very survival and quality of life depend critically on the social arrangements and decisions taken by the human occupants of the planet today.

I had stated that justice of any set of social arrangements must be assessed from the specific perspective of those equipped with the least power to influence these arrangements. These would include not only the marginalised people among the living human members of that society, but also, most importantly, other living species and also unborn future generations. In other words, any conception of justice must include not only conceptions of equity between human beings but also of inter-species and inter-generational equity. Put more simply, there can be no real justice without incorporating considerations such as of animal rights and environmental sustainability.

However, this book will restrict its scope to considerations of justice for contemporary human members of any society who have the least power within it. It is from this perspective that I have propounded the view proposed here. This is that one's notions of justice of a set of social arrangements should not hinge on the presumed or actual consensus of all human members of that society, but instead on the extent to which it ensures real freedoms for those within that society with the least power.

In seeking support for this view in the traditions of western philosophy, the Kantian categorical imperative is, for instance, relevant for its stress on the categorical need to treat every person 'as an end withal'. Therefore, each person should be valued, and entitled to substantive spaces and freedoms, even if the person is not manifestly or currently a productive member of society.

This is an extremely important principle for many categories of marginalised people. In both state responses and the mainstream of civil society responses to most such categories of people, there is an underlying belief that they are unproductive members of society and therefore, somehow deserving of their marginalised status. I have already argued firstly that the belief that these people are intrinsically unproductive is ill-founded and that their situation is more generally the outcome of a positive denial of opportunities and freedoms. However, there is a great danger of letting the argument rest there, because it suggests that if people are genuinely unproductive, such as from extreme and irredeemable biological failures, then in such cases there is justification in marginalising them, i.e. in denying them full life chances. However, in contradiction to this view, in the ethical belief system underlying this investigation, every person must be valued as an end in him/herself, not as a means of valued outcomes.

Particularly in feminist literature, an interesting contrast is sometimes made between the ethics of justice (posited to be a predominantly male ethic) and the ethics of caring (a female ethic). <sup>18</sup> The former treats individuals as moral subjects who are separate, equal, independent, self-contained, rational and who relate to one another on the basis of a rational presumed social contract. The dominant values are fairness, impartiality, detachment, autonomy, fulfilment of obligations and formal equality. The latter treats individuals as mutually interdependent, basically caring, and connected to one another; and the dominant values are responsibility and caring for others, attachment, the relieving of suffering and meeting the needs of diverse people (Dolovich 1993).

One reason why caring is seen by some feminists to be a predominantly female value (possibly the feminist ethic) is that it derives closely from the relationship of the mother with the child. However, even if it is assumed that empirically women practice this value more than men (and I believe that this indeed would be the case), this may be the result of social conditioning rather than biological characteristics. <sup>19</sup> I believe there is moral significance in women's cultural experience as care-givers, and see it as contributing an important corrective in our assumptions about human nature. One would learn to regard not 'rational' seeking of self-interest, but caring in the sense of empathy and disinterested reaching out to

others in need and distress, to be a fundamental human (and not only feminine) characteristic.<sup>20</sup> If we regard social thoughts and beliefs to be predominantly the outcome of existing social relations, then we may recognise that this essential feature of humanness may be distorted into self-seeking behaviour by the false consciousness generated by prevailing social arrangements.

In this section we see no intrinsic contradiction between justice and caring. A just state is necessarily also a caring one, especially if viewed from the perspective of those with the least power. There is no necessary contradiction between, say the detachment of justice, and the attachment of caring. Detachment is required in terms of disinterested and egalitarian giving of respect, space and resources without concern for the output and contribution of the individual; whereas attachment is required for recognising the special needs and potential of each individual. From the perspective of mainstream western philosophy, to speak of detached attachment may appear inherently contradictory, but in Indian philosophy it represents the core of many streams of ethical aspirations.

Perhaps the strongest support for such a perspective arises from the writings of Gandhi, who some would regard especially in retrospect as the most important political philosopher and practitioner of the twentieth century. He offered a talisman:

I will give you a talisman. Whenever you are in doubt, or when the self becomes too much with you, apply the following test. Recall the face of the poorest and the weakest man whom you may have seen, and ask yourself, if the step you contemplate is going to be of any use to him. Will he gain anything by it? Will it restore him to a control over his own life and destiny? In other words, will it lead to *Swaraj* for the hungry and the spiritually starving millions? Then you will find your doubt and your self melting away.

In summary, this section has used its critique of John Rawls' influential political theory of 'justice as fairness' to argue that the justice of any set of social arrangements must be assessed fundamentally by the real freedoms that it ensures for those within that society who are with the least power. We have also recognised that justice in this sense

involves considerations not only of equity between human beings, but also equity between species and between generations, even though the scope of the present chapter and indeed the whole study is restricted to the former.

#### Conclusion

During the last decade of the twentieth century, the goal of good governance has emerged high on the international agenda of international organisations and Northern governments. There is no doubt that the quality of governance has critical bearing on the lives and future of the poor people. Yet there is evidence that most of the contemporary pressure for good governance is being driven not by the critical survival needs of the poor but by trans-national corporate aspirations for a more predictable playing field as they negotiate an increasingly globalised economy.

It is critically important that this agenda for good governance is reclaimed by poor and marginalised people, from their perspective, to serve their needs, to meet their aspirations, to address their ends of greater equity and justice.

The investigation of this research study will attempt to draw conclusions from the experience of India about the respective roles of the state and civil society in securing justice and a better life for women and men, girls and boys who live in poverty. The conclusion, elaborated in the last chapter, is that impoverished and deprived people require not a retreating state but an activist strong state and powerful organisations of poor and marginalised people to hold governments responsive and accountable to them.

#### **Endnotes**

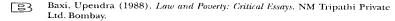
- 1. See World Development Report 1997.
- 2. See Reconceptualising Governance (UNDP et al. 1997).
- The term efficiency describes the relationship between inputs and outputs.
   When output refers to broad societal goals, such as better health, lower fertility rates and the production of educated manpower for the labour market, the

analysis focuses on the external efficiency of the social sectors. When output refers to goals internal to the social sectors such as drop-out rates in schools, the focus is on the system's internal efficiency. These aspects complement each other in determining the overall efficiency of the social sectors. (Tan and Mingat, 1992).

- 4. In the contemporary context, existentialism has been extremely influential in stressing that substantially a human being is what she chooses to be.
- See for instance the account 'The Secret Wounds of Jatin' in Mander (2001).
   Baba Amte, India's leading social worker who spent a life-time working with leprosy-cured persons, gave them a powerful slogan: It is not your charity that we want; we seek only a chance
- For details, see chapter in this monograph The State and Urban Poor in India: No time to Cry (chapter-6)
- In a recent judgement of the Indian Supreme Court (Almitra H Patel and ANR vs. Union of India, 2000–15.2.2000) slum-dwellers have been equated with pick-pockets.
- 8. Supra n. 19L. AIR 979 SC 1899 (1979) Cr. LJ. 1036, 1045, 1052. The Supreme Court directed the state Government to set free thousands of undertrial prisoners who were already in jail for the maximum period of sentence for which they could be sentenced on conviction.
- ibid.
- 10. ibid.
- 11. Without official consent. In order to get this consent people are often forced to bribe officials.
- See Dworkin in Norman Daniels (ed.), (1975). 'Reading Rawls: Critical Studies of Joh Rawls'. A Theory of Justice, Basil Blackwell, Oxford.
- 13. Nagel in Daniels (ed.) ibid.
- 14. Richard Miller in Daniels (ed.) ibid.
- Sharon Dolovich (1993). 'Does Political Morality Have A Gender? Feminism, Contemporary Liberalism and the Ethic Of Care'. Mimeo. Queen's College, Cambridge University.
- 16. Rawls (1975). ibid., p. 248.
- 17. Young 1990 ibid., p.3.
- 18. For an interesting and detailed exposition of this perspective, see for instance Dolovich, 1993 (ibid)
- 19. There are voices of caution within feminist philosophy that women's traditional roles of care-giving have not been freely chosen by women, but imposed by patriarchal institutions, and that over-emphasis on care as a feminist ethic may only reinforce what the patriarchal male wishes to see in women's moral commitments. See for instance Cole and Coultrap-McQuin (ed) (1992) Explorations in Feminist Ethics, Indiana University Press.
- 20. Unless one subscribes to some kind of biological determinism, for which there is no scientific basis, there seems no basis to separate mothering from fathering,

as a source for a system of ethics based on empathy and nurturing. It is reasonable to argue that the same patriarchal society, which reinforces the maternal role for women, also suppresses men's natural instincts of care and empathy. See Patricia Ward Scaltsas, *Do Feminist Ethics Counter Feminist Aims?* In Cole and McQuin (ed.)1992.

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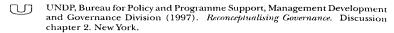
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Part Two

Chapter 2

# Crushed People and Unsteady Justice DALIT STATUS AND STATE INTERVENTIONS

# Scavenger Narayanamma

Narayanamma's day begins the same way every morning. She wakes up long before dawn, dresses hurriedly, and rushes off, so that she is on time for the roll-call taken by the municipal inspector, outside the municipal school, before 5a.m. She then proceeds to her allotted place of duty, searching on the way for large leaves or waste paper to line her basket. The only other tools she needs for her job — a flat, tin plate and broom — she holds under her arm.

There is always a large crowd of women waiting for their turn, a small pot or tin of water, held by the rim, in one hand, outside the municipal toilet where Narayanamma works. It has more than 400 seats, arranged in rows, for the women to squat. Open to the sky and to each other, the toilets are protected from curious eyes by a high wall. It is an old facility, maybe a 100 years old, but it still functions.

From time to time, after the women using the toilet file out, Narayanamma and her fellow workers are called inside. There is no flush. The shit only piles up at each seat, or flows into open drains. It is Narayanamma's job to collect it with her broom on to the flat, tin plate, and pile it into her basket. When the basket is filled, she carries it on her head to a waiting tractor trolley parked at a distance of half a kilometre. And then she is back, waiting for the next call from the toilet. This goes on until about ten in the morning, when at last Narayanamma washes up, and returns home.

Narayanamma is among the estimated one million workers, who continue to be employed in what is considered the lowest of all hereditary occupations in the Indian caste system, described in bureaucratic and legal officialese as 'manual scavenging'. It is regarded to be so polluting that all, including

even other dalit castes, avoid the touch of a manual scavenger. The situation of the manual scavengers had so outraged Gandhi's sensibilities, that he responded by the personal gesture of insisting on cleaning his own toilet. But the system was sturdy, and survived not only his death, but continues even into the twenty-first century.

A law in 1993 [the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993] declared the employment of scavengers or the construction of dry (non-flush) latrines an offence, punishable with imprisonment for up to one year and a fine of 2000 rupees. But the fate of this statute was similar to that of so many laws that are passed by Indian legislatures, which favour or protect the very poor and marginalised. These laws are rarely even acknowledged, let alone enforced. Narayanamma herself is an employee of the municipality district town of Anantpur in Andhra Pradesh. According to records of the state government, there are no dry latrines in the state of Andhra Pradesh. But in Anantpur we found that dry latrines were being operated by the local government itself, and cleaned by its employees. The irony of the government openly flouting its own laws is lost upon Narayanamma. Not only does the government maintain dry latrines; in Anantpur as in many other parts of the country, it thinks nothing of employing as scavengers only members of designated castes who are traditionally assigned this responsibility.

In contrast to the polluting nature of her occupation, Narayanamma like most of her fellow workers, is always impeccably dressed; her saree spotless, her black hair oiled and neatly combed and set off by white or orange flowers. Her home is spick and span, the floors and vessels bright and shining. There is a quiet assertion, of determined dignity amidst degradation, even a rebellion, in that cleanliness.

But Narayanamma is always chewing betel nut. "The smell of the shit never leaves you," she says. "Whatever you do, you smell it in your hair, your clothes, even in all that you eat. It is even worse when it rains, and the shit trickles through the basket onto your hair, face and shoulders. That's why we all eat so much betel nut, and," she confesses, "drink quantities of country liquor. It is the only way we can live with the shame of our work."

Since no one's caste is written on the forehead, in the city most people from lower castes are able to gradually shed their caste identity and be liberated

from it. But not the scavengers, who are always recognised because of their continued engagement with their despised profession. "Ai, municipality come, clean this," is how most people call out to Narayanamma and her fellow workers when they walk down the road.

"It is as though we do not have a name," she says. "And often they cover their noses when we walk past", as though we smell. We have to wait until someone turns on a municipal tap, or works a hand-pump, when we want water, so that these are not polluted by our touch. In the tea-stalls, we do not sit with others on the benches; we squat on the ground separately. Until recently, there were separate broken teacups for us, which we washed ourselves and these were kept apart only for our use." This continues to be the practice in villages even on the periphery of Anantpur, as in many parts of the state.

Narayanamma was born in a village called Itukalapalli, into the untouchable caste of Madigas. Of her 11 brothers and sisters, only six survived. The family owned no land, and worked as agricultural workers, or 'coolies' as they were called. Her father also worked as a cobbler, and the members of their sub-caste, the Pakhis, the lowest of the low, were summoned regularly to dispose of human corpses and animal carcasses, and dig graveyards. Women also went for domestic work to the Reddy landlord households, and wage work was sometimes available for breaking stones in the Guntukal railway junction. But since everyone in the village relieved themselves in the fields, there was no need for any manual scavengers.

Narayanamma's mother died of tuberculosis when she was three, and so the little girl had to go along with her father, to the fields or railway lines. From about the age of seven, she too began to work at the sites. But when she was nearly 12, her father also died. Her elder sister Pedakka, now decided that Narayanamma should be married. It was the only way that she could be protected. Pedakka had been married to Kadirappa, who worked as a manual scavenger along with his mother in the neighbouring municipal town of Anantpur. Kadirappa's mother died of a wasted liver because of the country liquor she drank in excess to overcome the shame of her vocation, and her employment in the municipality was passed on, a dubious legacy, to her daughter-in-law, Narayanamma's elder sister, Pedakka had been unable to give her husband any children. She thought perhaps Narayanamma would

**▶**(53)

be more successful. So when her father died, Pedakka persuaded Kadirappa to marry her younger sister Narayanamma.

It was in the temple of the deity Pennaobelam, that 13-year-old Narayanamma was given to Pedakka's husband. He was more than thrice her age, but was kind to her. Their first-born was a boy whom they called Pennaobulesu, after the God who had blessed their union.

Some 50 families of the Pakhis, another scavenger caste from their village, were settled by the Anantpur municipality in low-lying land outside the periphery of the town. The colony was named Ambedkar Nagar. In time it became part of the town proper.

Meanwhile, Narayanamma's elder sister Pedakka grew increasingly frail. She too incessantly chewed betel nut and tobacco. A festering sore in her mouth eventually grew into a cancer that would be terminal. Initially, Narayanamma went along with the ailing Pedakka to the toilets, to help her out. But soon, her sister died. Narayanamma's first-born son was just two. Since then she has taken to her elder sister's occupation.

Recalling her early days at work, she said it was an ongoing nightmare. Even as she entered the toilet she would feel sick, and this would worsen as she gathered the shit in the basket. The basket would weigh around 10 kilograms, and she and the other women often felt weak and dizzy under its weight and stench. The men were once given gloves and wheel-barrows by the municipality as part of a government scheme to ease their burden. But the wheel-barrows were badly made and so heavy to push, that the men went back to carrying the baskets of shit upon their heads. The gloves were much more useful, but why only the men got these, and that too only once, neither Narayanamma nor Kadirappa knew.

Their family grew steadily. After Pennaobulesu came a daughter and two sons. Kadirappa ensured that the children went to school. In the municipal schools of the town, there was less open discrimination and therefore, they were able to get admission; Pennaobulesu completed high school.

When Pennaobulesu was in his late teens, Kadirappa suffered a stroke, which partially paralysed his left side. The sanitary inspector wanted him to retire prematurely, but Kadirappa pleaded to be allowed to continue, and with

great effort moved his left arm to show how he was still capable and strong. His son would now accompany him and help him in his work. When Kadirappa finally retired five years ago, he tried hard to ensure that his son should get his job, despite his education. Somewhere in his mind the extreme social degradation connected with this job was compensated for by the economic security it offered. But Chief Minister NT Rama Rao had abolished hereditary rights over all municipal employment, and others of their caste competed for Kadirappa's position. The sanitary inspector demanded a bribe of Rs20,000 to give their son the job, which they refused. If they had to raise and invest so much money, they might as well give the boy a chance in a more respected profession. The boy instead opened a tea-stall in Ambedkar Nagar itself. At least the residents of Ambedkar Nagar would not suffer the segregation seen in tea-stalls elsewhere. His tea-stall therefore, does good business with the people who live in Ambedkar Nagar.

In 1998, a young man who introduced himself as Wilson Bezawada first visited them at their home in Ambedkar Nagar. "I was born into the same community as you", he told them, "I am also a Madiga, a Pakhi. I know your anguish and your shame, and I want to help you."

But, at that time, Narayanamma vociferously denied that any of them were engaged in manual scavenging, and shut the door in the face of the stranger Wilson. "We do not know anything about the work that you speak about, she told him. "It does not happen here."

The young man was determined to break what he knew was a conspiracy of silence. He returned to their home time and again. Narayanamma and her family, after a few visits, invited him into their home, and were entranced when they heard him speak. He did not work as a scavenger, yet he declared to all that he belonged to their community. There was so much anger, so much pain, when he spoke to them, but also so much pride.

He had grown up in the Kolar goldfields, Wilson told them. The goldmines, once owned by the British, were now run by the government. But long before his birth, his father had given up scavenging and become a gardener in Kolar. As a young man, Wilson offered to work as a church volunteer with boys who were school dropouts. From some of them, he learnt about the practice of manual scavenging. He recalls he wept, when for the first time he saw what it meant to be a scavenger.

The Ripped Chest Dalit Status and State Interventions

To work towards ending this inhuman practice became an obsession with him. He joined a seminary to become a priest, but soon left because the principal found his activism unacceptable in a man of God. He had taken photographs of dry latrines that were run in the church campus itself. He put them by the Cross, and he urged the church authorities to stop this. He wanted them to lead a campaign to end scavenging, but they refused to take up the issue. If we raise this problem, people will assume that all Christian converts are scavengers,' the church authorities tried to reason with him.

Wilson fought a long battle for over 15 years right up to the year 2000, with the management of the government-owned Kolar goldfields. Once again, they refused to acknowledge that manual scavenging was being practised within the precincts of the mine. He then filed a public interest suit in the courts, and was able to secure a court directive for the closure of dry latrines, and the employment of people from the Pakhi community in jobs other than scavenging. As a result, for the first time, members of his community were employed as welders, tanners, fitters, in 1988, although the dry latrines continued to be in use. But in 1998, when the regular sanitary workers went on strike, these boys were called back to work again as scavengers. "Imagine our shame," these young men told Wilson. "Our colleagues with whom we shared the factory floor until yesterday, would come to the toilets with a small pot of water, and we would arrive there with a broom and basket."

The boys' protests were of no avail. Nevertheless, it further strengthened Wilson's resolve to build a powerful organisation of people from scavenging castes, so that their voice and their struggle for dignity could no longer be ignored. It is only now in the year 2001 that dry latrines in the Kolar goldfield are being shut, but this is not to belatedly restore dignity to those who worked to clean these latrines, but because the mine itself is being closed down.

Wilson's campaign to build an organisation of scavengers has taken him to many towns in Karnataka and neighbouring Andhra Pradesh. He has sought more and more adherents for change from his community, mostly women, whom he found more resolute. It was this search which took him also to Narayanamma's threshold.

She too was increasingly drawn to Wilson. A small but growing band, consisting mainly of women and youth of the community in Anantpur opposes the practice of manual scavenging.

There are many in the community who are anguished by the daily shame of their work, and yet are unwilling to abandon it for the looming terror of unemployment. In the choice between dignity and security, most, initially, choose the latter. It is for Narayanamma and her friends to persuade them to risk the perils of unemployment, so that their children can grow up with dignity, with their heads held high.

On 18 April 2000 an organisation called the Dalit Human Rights organised a national public hearing in Chennai on the problems of dalits in the country. Leading men and women in the areas of law and social activism were on the panel, including Justice Punnaiya, Justice Suresh, Ram Jethmalani, Mohini Giri and Justice Ramaswamy.

Among those who were invited to give evidence before this eminent panel was Narayanamma. It was only two years earlier that Narayanamma had denied to Wilson when he first knocked on her door that she was employed in manual scavenging. Today, head held high with pride, eyes fierce with indignation, her hair oiled and adorned with flowers, dressed in her best saree, she spoke out to the world. She spoke of what she was utterly convinced must end.

"Why should I feel shame that I do this work," she now asks. "Those who make me do it have the real reason to be ashamed" (Mander 2001: 37-46).

Dalits in contemporary India comprise about one-sixth of the entire Indian population Yet they bear a disproportionate share of its socio-economic burdens. Not only do they usually fall at the bottom of almost any parameter relating to economic well-being or quality of life but also of all underprivileged groups in India, they suffer the deepest social degradation in the shape of a centuries old tradition of untouchability. Unlike tribal people, who have lived until recently in relative isolation from mainstream civilisation, society and economy, dalits have always been an integral part of these, but placed determinedly at the bottom, below the ritually sanctioned 'line' of pollution.

The word 'dalit' literally means a poor and oppressed person. But it has acquired a new cultural context implying 'those who have been broken, ground down by those above them in a deliberate and active way' (Zelliot 1978).<sup>2</sup> The term has been used chiefly to refer to ex-

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untouchables, although more recently it has been sometimes extended also to include other oppressed groups, such as tribals, women, bonded labour, minorities and so on. But for the purposes of this chapter, we will confine our usage to the popular interpretation of the term only to ex-untouchables or those who are officially designated as the Scheduled Castes.

# Status and Practice of Untouchability

In the widest terms, untouchability may be defined as the practice of imposing social disabilities on persons by reasons of their birth in certain castes (*Human Rights Watch* 1999). But in the more widely used specific sense, I P Desai (1976) defined the practice of untouchability as the avoidance of physical contact with persons and things because of beliefs relating to pollution.

Untouchability has become an intrinsic feature of the Hindu caste system (although some commentators, most influentially Mahatma Gandhi, regarded untouchability as an aberration of the caste system), constructed around the ideas of ritual purity and pollution.<sup>3</sup>

Following the wide-ranging socio-cultural changes accompanying modernity, the impression gained ground that untouchability as a practice had passed into history. However, many contemporary empirical studies indicate that untouchability continues to be an important component of the experience of dalithood in contemporary India, especially the countryside, but that it is a complex, dynamic situation, of flux and transition.

We shall summarise the findings of four studies and reports. In chronological order, we look first at perhaps the most influential non-official research, a study of untouchability in rural Gujarat by I P Desai published in 1976. The Table 3 summarises the findings.

As evident from the above table, the study confirms significant differences in the practice of untouchability in what the study describes as the 'private' and the 'public' spheres. The study concludes that in all public arenas (i.e., schools, post offices, buses, etc.) barring the village panchayat, untouchability in the sense of (avoidance of) physical contact was no longer a significant problem. This is a useful

Table 3

Practice of untouchability in rural Gujarat (figures in percentage)

SI. No.	Untouchability in regard to	Practised	Not practised	Nebulous state	Total
1	Water facility	74	7	19	100
2	Temple entry	89	8	3	100
3	House entry	90	10	0	100
4	Shop entry	82	14	4	100
5	Giving and receiving things in the shop	60	30	10	100
6	Paying wages	59	26	15	100
7	Agricultural work situation in the field	35	48	17	100
8	Services of barber	94	6	0	100
9	Services of potter	17	27	3	100
10	Services of tailor	31	64	5	100
11	Sitting arrangement in the panchayat	47	53	0	100
12	Sitting arrangement in the school	2	96	2	100
13	Delivering the post	17	83	0	100
14	Buying stamps in the post office	4	96	0	100
15	Boarding the bus	4	96	0	100

reminder that with all their limitations, the institutions of the state often offer better protection against traditional forms of discrimination than the village institutions.

When the private sphere was further sub-divided into the religious or cultural, domestic and occupational spheres there was little uniformity with regard to observance or non-observance of untouchability. Untouchability was very widely prevalent with regard to cultural matters such as temple entry. It was equally widely prevalent in the domestic sphere (including the shop of a Savarna Hindu along with his or her house). 'Significant breaches', on the other hand

were noticed in the occupational sphere, particularly in relation to agricultural work, services of potters, tailors, etc., though it continued with respect to barbers' services. However, untouchability continued to be a major disability for the lower castes as far as water facilities were concerned, particularly in the semi-arid climate of the region (Desai 1976).

Similarly, a 1990 study of untouchability in a very different part of the country obtained similar findings. The Ambedkar Centenary celebration committee of Chitoor District of Andhra Pradesh (AP) conducted an elaborate door-to-door survey in a *padayatra* to 249 villages to assess the prevalence of untouchability (Frontier 1991).

It found that throughout the district, as a rule, members of SC communities are not allowed into the houses of non-SCs, with the minor exception that in towns like Chittoor, Tirupathi, etc., the rule did not apply to unknown persons. Further, 'it is also not at all easy for members of SCs to get accommodation in areas where non-SCs s live either in the town or the village'. Similar restrictions were faced by members of SC communities in the matter of temple entry except that 'in most cases the temples are not enclosed by a wall. The deity is either placed on a raised platform or kept inside a small temple with space not sufficient to allow anyone inside. So there is no scope for either entry or preventing people from worshipping' (Frontier 1991).

The *Padayatra* team also found that in tea shops in 249 villages including three mandal headquarters, tea was served in separate glasses for SCs, and in most cases, members of SC communities had to wash the tumblers themselves, both before and after drinking tea and hold the glass when the tea shop owner poured tea from a height. As in Desai's study, barber shops were found not to serve SCs.

However, more shockingly, in at least 16 of the villages visited, SCs were not allowed to walk with any type of footwear through streets used by non SCs.

The National Commission for Scheduled Castes and Scheduled Tribes, a constitutional body set up under Article 338 of the Indian Constitution with the express responsibility of safeguarding and monitoring the statutory protection of SCs and STs, undertook a sample study in seven states of Bihar, Uttar Pradesh (UP), Rajasthan, AP, Tamil Nadu (TN), Karnataka and Kerala. It found that untouchability was prevalent in the following forms in the states covered by the study:

- ▼ SCs did not, to a large extent, have access to temples and other places of public worship in UP, TN, Kerala, Rajasthan and Karnataka.
- ▼ A sizeable section of SCs in TN did not have access to drinking water. This situation existed in UP, Rajasthan and Kerala as well.
- ▼ Untouchability in the form of non-access to tea stalls and hotels was found in UP, TN, Rajasthan and Kerala.
- ▼ Barber services were not available to a section of SCs in TN and to a lesser degree in UP, Rajasthan, Maharashtra, Karnataka and Kerala.
- ▼ Washermen's services were not found available to a section of SCs in TN. To some extent this disability existed in UP also.
- ▼ In TN, Bihar, UP, Kerala and Karnataka, SCs were discriminated against in the matter of participation in social ceremonies.
- ▼ Discrimination with regard to participation in the sittings at Village Chaupals and Gram Sabhas existed in TN and UP, and to a lesser extent in Rajasthan.
- ▼ In Rajasthan, a section of SCs were discriminated against in educational institutions, public health centres, etc.
- ▼ Discrimination in respect of use of utensils meant for general public existed in UP, TN, Rajasthan and Maharashtra.
- ▼ Forced practice of occupations like removal of carcasses, etc., by SCs was prevalent in TN and to a lesser extent in UP
- ▼ SCs were discriminated against in the use of public cremation/ burial grounds public passage, etc., in TN and to a lesser extent in Maharashtra and UP.
- ▼ There existed disability to the Scheduled Castes in the matter of construction/acquiring occupation residential premises in TN and to a lesser extent in UP. This included access to dharamshalas/sarais (National Commission for Scheduled Castes and Scheduled Tribes 1990: 3).

Untouchability continues to be practised in many part of rural India. However, the situation is far from static. The practice is widespread in the cultural and domestic spheres, partial in the occupational but largely absent in the public sphere with some major exceptions.

In towns and cities, however, there is far greater anonymity and occupational mobility, which enables blurring of caste identities. It has been documented that urban migration by dalits is often impelled not only by economic compulsions, but also by the desire to escape the social degradation of untouchability.

But untouchability continues to be practised widely in cities in the domestic sphere (marriage, inter-dining, and social intercourse). As M N Srinivas puts it, when the urban Indian puts on his shirt, he takes off his caste, but when he takes off his shirt, he puts on his caste. The study of Chitoor district referred to above notes that even in major cities like Chitoor and Tirupati, a person known to belong to the SC community is not permitted entry into the houses of non-SCs.

The situation is most acute for those dalits in cities who still engage in traditional occupations such as scavenging. This author found in city after city in Madhya Pradesh (MP) that urban scavengers continued to be victims of untouchability, precisely because they were denied access to caste anonymity as they continued to adhere to their traditional 'unclean' occupations.

Untouchability also manifests itself in the mode in which dalit settlements are segregated from the caste-Hindu villages. Describing this as a mode of hidden apartheid, the Human Rights Watch (1999) reports:

Most dalits in rural areas live in segregated colonies, away from the caste Hindus. According to an activist working with dalit communities in 120 villages in Villapuram district, Tamil Nadu, all 120 villages have segregated dalit colonies. Basic supplies such as water are also segregated, and medical facilities and the better, thatched-roof houses exist exclusively in the caste Hindu colony. 'Untouchability' is further reinforced by state allocation of facilities; separate facilities are

provided for separate colonies. Dalits often receive the poorer of the two, if they receive any at all (Human Rights Watch 1999: 26–27).

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# **Atrocities Against Dalits**

The Human Rights Watch Study (1999) mentions that closely related to the practice of untouchability are other atrocities against dalits. In its 1990 report the National Commission for SCs and STs studies atrocities such as murder, grievous hurt, rape, arson and crimes involving substantial loss of property of dalits for the period 1983 to 1987 in five states – Bihar, Rajasthan, MP, AP and TN.

The study notes an alarming increase in crime against SCs, especially in murder and rape. It relates atrocities to caste prejudice and untouchability, on the one hand, and political and economic conflict relating to land, wages, indebtedness, bondage, etc., on the other. Land disputes are identified as the single most important cause, including disputes related to implementation of land reforms, allotment of cultivable land and house sites, envy of a good crop raised by dalits, use of community land, etc. Likewise any attempt by dalit agricultural labourers to agitate for reasonable wages usually meets with violence at the hands of the landowning classes.

The fact that atrocities continue against SCs is admitted even by official statistics. A 1997 report of the Ministry of Home Affairs states that:

Between 1994 and 1996, a total of 98,349 cases were registered with the police nationwide as crimes and atrocities against scheduled castes. Of these, 38,483 were registered under the Atrocities Act. A further 1,660 were for murder, 2,814 for rape, and 13,671 for hurt. Given that dalits are both reluctant and unable (for lack of police cooperation) to report crimes against themselves, the actual number of abuses is presumably much higher (quoted in Human Rights Watch 1999: 41).

Dalit women suffer the triple burden of caste, class and gender,<sup>4</sup> and continue to routinely suffer sexual abuse and rape by upper-caste landlords in many parts of the country. The Human Rights Watch notes with bitter irony that 'no one practices untouchability when it comes to sex' (1999: 31). It also notes that

dalit women are also raped as a form of retaliation. Women of scheduled castes and scheduled tribes are raped as part of an effort by upper-caste leaders to suppress movements to demand payment of minimum wages, to settle sharecropping disputes, or to reclaim lost land. They are raped by members of the upper caste, by landlords, and by the police in pursuit of their male relatives (Human Rights Watch 1999: 31).

# Pollution Line vs. Poverty Line

The central problem and the paramount aspiration of the dalit has been not only for economic emancipation and improvement in the conventional quality of life indices, although these are extremely critical, but also for equality and dignity within the traditional social order which has denied them justice and self-respect for centuries.

This is by no means to deny that the 'pollution line' and the 'poverty line' do substantially overlap. The 1991 census indicates that only 18.7 per cent of SCs reside in urban areas, against 29.2 per cent of the general population. Given this heavy rural concentration, it is not surprising that as many as 45.4 per cent of those employed are agricultural workers, as against the general population figure of 20.1 per cent. Further, only 23.6 per cent SCs are cultivators as against 40.5 per cent in the general population. Even for this meagre proportion, 71.8 per cent of the holdings are less than one acre in size. The inadequate access of dalit communities to land resources is further evidenced by a low share in land to population ratio of 0.48 more than half the general population's 1.07 (Pushpendra 1999).

Moreover, about 44 per cent of the SCs live in the three states of UP, Bihar and West Bengal, and in these states, a very high proportion of those listed as SC 'cultivators' in the census, are actually sharecroppers (Mendelsohn and Vicziany, 1998). Typically, sharecroppers in these areas provide all labour and inputs with half the cropshare going as rent. Except in West Bengal, sharecroppers rarely enjoy security of tenure. <sup>5</sup>

A total of 77.1 per cent of SC main workers are employed in the primary sector. As little as 9.8 per cent are engaged in the secondary

or 'manufacturing' sector, which would also include traditional crafts such as leather and basket-weaving. A slightly higher 13 per cent are in the tertiary services sector, although once again this would include traditional occupations such as manual scavenging.

The picture is no different when we come to urban areas. Almost 84 per cent of urban SCs are unskilled labour in the unorganised service sector, e.g., loaders, porters, cycle-rickshaw pullers, sanitary workers, brick kiln and quarry workers, etc.

The situation is equally dismal with regard to literacy levels, as evident from the following table:

Table 4

Literacy rates among Scheduled Castes and the rest of the population

	General	SC	General	SC
Year .	1971		1991	
Total Literacy	29.5	14.7	52.2	37.4
Year	1990–1991		1997–1998	
Gross Enrolment ra	atio			
Class I–V				
Total	87.0	84.2	89.7	92.4
Girls	75.1	68.3	81.2	81.6
Class VIVIII				
Total	49.4	41.3	58.5	48.9
Girls	39.4	28.8	49.5	37.6

Note: The gross enrolment ratio for 1990–1991 has been recalculated taking into account the 1991 census, instead of 1981

Source: Department of Education, Government of India in an unpublished Planning Commission document.

It is clear from the Table that though SC literacy in 1991 continued to lag behind the rest of the population, SC gross enrolment ratios took a lead over the general population in 1997–1998 for classes I–V. For classes VI–VIII, however, these remained poor.

Thus poverty, lack of economic resources and illiteracy, both in rural and urban contexts, remain central to the reality of dalit existence.

# Special Vulnerability of Dalits in Traditional 'Unclean' Occupations

The relative dissonance between economic and social parameters of deprivation is most acutely visible in relation to the status of dalits engaged in traditionally 'unclean' occupations, such as scavenging, disposal of human and animal carcasses, flaying and tanning and prostitution. We have already seen how adherence to traditional 'unclean' occupations remains the primary reason for the survival of the practice of untouchability in the public sphere in urban areas.

Even more critically, these socially most disadvantaged dalits are confronted continuously with a tragic dilemma. Manual scavenging is a term evolved in bureaucratic and legal language to describe the vocation of cleaning human shit from public or private latrines, and carrying it to disposal sites. Adherence to occupations such as manual scavenging which are indispensable for society, but which no other group is willing to perform, bestows upon them a monopoly status that ensures that they are economically more secure than almost any other underprivileged group. But this economic security is at the brutal price of the greatest social degradation, including being victims of untouchability even in the environment of anonymity and economic mobility that is found in the cities. Yet if they seek to escape this social degradation to achieve dignity, they have to abandon the economic security of their traditional occupations and join the vast ranks of the proletariat. This then is the core of their dilemma: if they seek economic security, they must accept the lowest depths of social degradation; but if they wish for social dignity, they must accept the price of economic insecurity and deprivation.

The toilets cleaned by manual scavengers are typically dry or without flush technology, therefore the shit piles up on the ground after use. It has to be manually removed, and this is the task of manual scavengers. They usually do this work with their bare hands, with the minimum of instruments: a basket, a broom and a flat, tin plate.

In most parts of the country, manual scavenging survives as a hereditary caste-based occupation, pursued by communities variously described as *Bhangis* and *Mehtars* in various parts of North India and Gujarat, *Pakhis* in AP and *Sikkaliars* in TN. The community has sought less stigmatised appellations, like Valıniki and Sudarshan in North India, but mostly their traditional names persist. In government parlance, they are now described as *safai karmacharis* or sanitary workers.

Official estimates of the number of persons engaged in manual scavenging are in the vicinity of one million, but unofficial estimates are much higher (Human Rights Watch 1999). It is a practice that outraged Gandhi, but for decades after Independence was not significantly focused upon in public policy. It was only in 1993 that the Government of India passed the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 which provided for imprisonment of up to one year and a fine of up to Rs2000, for those who engage manual scavengers or construct dry latrines. However, an overnight blanket legal prohibition should not end up harming rather than helping the scavengers, therefore, it must be accompanied by extensive measuring for re-integration, rehabilitation and social mobilisation.

The irony is that dry community latrines continue to be maintained by large numbers of local city governments throughout the country, who employ manual scavengers for handling human shit. In official reports to state governments, or to the High Courts or Supreme Court in response to public interest litigation, state governments continue to file false affidavits that the practice no longer exists.<sup>6</sup>

The neglect of this law by state governments was acknowledged by the National Commission of Safai Karmacharis, a statutory body set up as required in the 1993 Act, in its report of 1997. The National Commission (1997) described manual scavengers as 'the most oppressed and disadvantaged section of the population' who are 'totally cut off from the mainstream of progress' (National Commission for Safai Karmcharis 1997 quoted in Human Rights Watch 1999).

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#### Caste in Non-Hindu Religions

The strength of the institution of caste in the Indian tradition can also be perceived by the manner in which it has permeated even egalitarian religions such as Christianity and Islam, transplanted into Indian soil.

Traditional scavenging communities that sought social dignity through conversion to Islam, for instance like the *Helas* of the Malwa and Nimar regions of MP, have achieved no change in status except the right to read *namaaz* in the mosques alongside their co-religionists. For the rest, nothing has changed; they remain scavengers and other Muslims deny them all forms of social intercourse except community prayers, and there are no inter-dining or marital bonds. In fact, along with untouchability they carry the newer burden of communal hatred. It is their slum settlement that the Hindu mobs usually attack first and most brutally during an outbreak of any communal violence.

The experience of the Pulaya Christians of Kerala, formerly untouchable Hindus, is no different. Even after more than 70 years of conversion to Christianity, they continue to be treated as untouchables even by the Syrian Christians, who enjoy high social and economic status (Shah 1990).

#### **Dalit Cultural and Political Assertion**

No attempt at understanding dalit status would be complete without reference to the process of dalit cultural and political assertion. This is reflected during the present century even in the evolution of the designation by which dalits have described themselves. From the achhut (untouchable) and ati-shudra of the turn of the century, the large majority in the community initially accepted with gratitude Gandhiji's new coinage harijan (Children of God) to escape the indignity of their earlier appellations. However, especially in the decades after Independence, many within the community perceived an undercurrent of condescension in the term, and they preferred the neutral usage of 'Scheduled Castes' found in the Indian Constitution. But after the seventies, the term 'dalit' has become increasing popular, with its connotations of active anger, assertion

and pride. 'There is in the word itself an inherent denial of pollution, karma and justified caste hierarchy' (Zelliot 1978 quoted in Shah 1990). And more recently, the ambit of the term 'dalit' has been widened to embrace other oppressed categories, possibly as part of a growing consciousness of the need to build a larger alliance of all disenfranchised and exploited groups.

However, dalit assertion is not a phenomenon of the present century. The *bhakti* movement, between the tenth to the thirteenth centuries, was at its core a revolt against caste identities, untouchability and especially restrictions on worship. It asserted equality before God (Shah 1990). Such revolts against restrictions on worship continued sporadically through the centuries. More recently, the Arya Samaj as also Gandhiji sought to reinforce the traditional identity of the dalits as Hindus, but without the stigma of untouchability. Gandhiji during the freedom movement, rallied public opinion against untouchability and sought to restore their dignity by gestures such as living in scavenger *bastis*, adopting a *harijan* girl, and cleaning his own toilet.

Babasaheb Ambedkar was far more radical in his opposition to the caste system, and was convinced that untouchability was an integral element of the caste system and the former could not be overcome without destroying the latter. In his seminal address during the agitation by dalits to draw water from Chavander Lake at Mahad, access to which they had always been denied, he said, "It is not as if drinking the water of Chavander Lake will make us immortal. We have survived well enough all these days without drinking it. We are going to the lake to assert that we too are human beings like others" (Dr. Ambedkar's speech at Mahad; Status of Dalits 1994). Towards the end of his life, Ambedkar became totally disenchanted with Hinduism, because he felt that not only was untouchability integral to the caste system, but also that the caste system was integral to Hinduism. Therefore, he concluded that the path of dignity for dalits lay in abandoning their Hindu identity. Along with many of his followers, he chose to convert to an alternate 'indigenous' faith, Buddhism.

In independent India, the left parties have neglected, even opposed caste, as a legitimate basis for identity and organisation of the

oppressed. It was in 1972 that a radical group in Maharashtra constituted the dalit Panthers, patterned after radical Black groups in America. The emphasis was on cultural assertion, pride and self respect, with a central role for protest dalit literature (Shah 1990)<sup>7</sup>.

The new assertion of the dalits as a separate self-conscious political entity is based on a shared perception of caste discrimination and oppression. This newfound militant and aggressive caste consciousness is in some ways parallel to the classical Marxist 'class consciousness' because it signifies an awareness of oppression and consequent organised mass action to fight it. But it also runs fundamentally counter to Marxian class-consciousness, because the basis of the shared identity is not one's position in the mode of production but in the ritual caste hierarchy.

Organised political assertion by dalits as a power group in North India is a comparatively recent phenomenon, symbolised most dramatically in the rise to power of the Bahujan Samaj Party (BSP) in the 1993 UP Assembly elections. Coming as they did less than a year after the demolition of the Babri Masjid in Ayodhya and some three years after the Mandal agitation (see below), these results seemed to suggest a new consciousness among dalits that though they had been so far used by the major parties of the centre and the right, mainly the Congress and the Bharatiya Janata Party (BJP), to attain political power, the real agendas of both parties have no real relationship with the problems and welfare of dalits.

The BSP has switched alliances with both the Congress and BJP, earning for itself the reputation of being an 'unreliable' and 'opportunistic' formation. However, Gail Omvedt argues that

From the perspective of most dalit activists, alliances with the BJP or the Congress come not through political Hindutva values or Congressstyle secularism. Instead, in a long-term effort to build a new dalit political force, electoral alliances are simple matters of short-term calculation or even survival. At present, most of the dalit parties are too weak to survive alone. The alliances then are not "opportunistic" but are rather tactical, or at best strategic. Even so, the question of a programme, of a long-term vision of an equalitarian, free, transformed society and how to achieve it, remains (Omvedt 1999: 3).

A study by the Centre for Study of Democratic Societies (CSDS) (Frontline 1999) discussed by Omvedt (1999) found that dalit voting support for both the BJP and Congress showed a consistent decline. 'In 1996, according to the CSDS, 13.2 per cent of the dalits as against 27.1 per cent of the caste Hindus voted for the BJP; in 1998, the percentage was 13.5 and 34.5'. In the same way, in 1967, '45.2 per cent of the dalits voted for the Congress; this figure rose to 52.8 per cent in 1980. But by the late 1980s, this share declined; and only 31.4 per cent in 1996 and 29.9 per cent in the 1998 voted for the Congress' (Omvedt 1999: 1). The most significant positive trend identified by the CSDS was 'that where possible the dalits are voting for their own parties, which not only openly proclaim their identity as dalit-based but are led by the dalits' (Omvedt 1999: 1–2).

The situation continues to be dynamic, and it is still too early to make firm generalisations. What is also to be seen in the future is the extent to which this new dalit political assertion articulates and addresses itself to the problems of the 'lower depths' of the dalits – the scavengers and others in traditional 'unclean' occupations, dalit women, landless labourers, bonded labourers, unorganised unskilled workers in urban slums, etc. This experience will have important implications not only for future modes of political organisation and assertion of the dalits, but also for the effectiveness of state intervention for dalits.

Outside the mainstream of electoral politics, most notably in Bihar, the dalits have been mobilised by extremist left political formations, broadly known as 'Naxalites'. But whereas dalits are among the disadvantaged sections that form the 'constituency' of the Naxalite movement; yet the Naxalites, like other Marxists, have been extremely reluctant to take up caste issues as such, and the Naxalite movement is very upper-caste dominated. These far-left formations organise bloody attacks on identified class enemies such as upper caste landlords, and police and village officials, arson and bomb attacks

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forcibly occupying and redistributing agricultural lands owned by landlords or the state. The state has responded with its own violence including torture, illegal detentions and the killing of suspected Naxalites in 'fake encounters' with the police. The upper caste landowners have raised their own private armies, and the local state administration is often tolerant of their violent postures against dalit villages reputed to be sympathetic to the Naxalites. One of the most notorious of these militias, the Ranvir Sena, has brutally killed more than 400 dalits between 1995 and 1999 (Human Rights Watch 1999).

#### **State Interventions**

The state has intervened in favour of dalits in a variety of ways since Independence. These include:

- + Constitutional and legal provisions
- → Positive discrimination in government employment as well as in elected representative bodies through reservation
- ◆ Budgetary support through the Special Component Plan (SCP) approach
- ◆ Special programmes of health and education
- Priority in all rural development, slum improvement and antipoverty programmes for the SCs
- Technological changes such as conversion of dry latrines to flush latrines for release of persons engaged in traditional occupations.

This wide range of measures has succeeded somewhat in redressing the balance of social, and economic and political power in favour of the dalits. Yet, as we have seen in the earlier sections not only does the poverty line substantially overlap with the pollution line, but dalits also continue to suffer from caste prejudice, untouchability and atrocities in large parts of the country. This chapter seeks to examine some existing strategies, and explore measures to make state intervention in support of dalits more effective. No claim is made that the measures suggested are either comprehensive or conclusive. The attempt is only to indicate some possible directions of state action, and initiate debate on these issues.

# Constitutional and Legal Provisions

Let us take first the existing constitutional and legal provisions. The Constitution of India contains a number of provisions for removal of disabilities and discrimination against SCs. These provisions relate to prohibition of restriction of access to public places (Art.15.2); reservation of appointments or posts in favour of any backward classes of citizens not adequately represented in the services under the state (Art.16.4); abolition of untouchability (Art.17); restriction of traffic in human beings and forced labour (Art.23); protection of right to admission to educational institutions (Art.29.2); special care for promotion of educational and economic interests of SCs (Art.46), reservation in seats and special representation in parliament and state legislatures (Art.334); reservation in services (Art.335); and appointment of a Special Officer for SCs and STs (Art.338).

The Protection of Civil Rights Act, 1955 prohibits and provides penalties for offences that amount to practice of untouchablity in religious places like temples, in public places like shops, restaurants, hospitals, etc., refusing to sell goods or render services because of considerations of untouchability, and demanding compulsory labour relating to untouchability like scavenging, sweeping, removal of carcasses, flaying animals, etc. (Human Rights Watch 1999). It contains provisions for all offences to be cognisable with summary trials.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 specifies the atrocities liable to penalties under the Act. These include bonded labour, intimidation during voting, public humiliation, outrage of modesty, sexual exploitation, obstruction of entry to a place of public resort, eviction from habitation, mischief with explosives, destruction of buildings and suppression of evidence. Under the Prevention of Atrocities Act these offences carry heavier penalties than similar offences under the Indian Penal Code. The Act also provides for forfeiture of property and collective fines. <sup>10</sup>

In addition to special enactments meant exclusively for SCs, there are other protective measures of special relevance to SCs because

along with the STs, they constitute a substantial proportion of the disadvantaged persons whom these enactments are meant to benefit. These are the Bonded Labour System (Abolition) Act, 1976, the Minimum Wages Act, 1948 and the Child Labour (Prohibition and Regulation) Act, 1986.

Despite this impressive range of protective legislation, the record of implementation of these measures has been dismal. Social, economic, administrative and judicial arrangements are heavily weighted against the dalits with regard to the responsiveness of the law and order machinery to atrocities. Both the National Commission for SCs and STs and the National Police Commission (1980) document several recurring pathologies, such as delays in reporting, refusal to register complaints, delayed arrival on scene, half-hearted investigation, failure to cite relevant provisions of law, brutality in dealing with accused persons of the weaker sections, soft treatment of accused persons from influential sections and making or failing to make arrest on personal considerations. Poor quality of prosecution, protracted pendency and procedural delays before courts and high percentage of acquittals were some of the other common maladies documented in the study.

In its 1990 report, the National Commission for SCs and STs has documented several of these pathologies. The Commission found that investigating officers visited the place of crime after a lapse of more than 12 hours in a very large number of cases, even when the crimes were murder, rape, grievous hurt and arson. Such delays would naturally result in the destruction and suppression of evidence. The Commission also found an abnormal delay (beyond 60 days) in the filing of chargesheets in as many as 72 per cent of the cases involving SCs in Bihar, and 50 per cent in AP. For MP, Rajasthan and TN this percentage was 27 per cent, 25 per cent and 42 per cent respectively. The study has shown that even in cases where the provisions of other enactments like the Bonded Labour System Abolition Act, 1976 are applicable, police officers at the station house-level continue to cite only the Indian Penal Code (IPC) provisions in the chargesheets.

These various pathologies are also reflected in the high rate of acquittals in atrocity cases, against SCs. Acquittal in these cases in

TN was as high as 88 per cent of the cases disposed of. The percentages in AP and Rajasthan were 62 per cent and 71 per cent, respectively. In cases of atrocities against STs, the corresponding figures for TN, AP and Rajasthan were 75 per cent, 74 per cent and 42 per cent.

In several states, special police stations for SCs and STs have been set up, but unwieldy jurisdiction and demotivated staff have caused only further hardships to the victims of untouchability and atrocities. The same tokenism is also often found in relation to setting up of special courts for speedy trial of atrocity cases for which there is provision in the Atrocities Act, 1989. Most states have resorted to designating the existing District Sessions courts as special courts, which in practice will obviously contribute nothing to the speedy implementation of these cases.

The situation is further complicated because of the unconfronted and uncomfortable reality that in a large number of cases involving SCs and STs the adversary is actually the state. Thus, the dalit litigant has to cope not only with the extreme inequity of the legal system and the economic strength of his opponents, but also with the power and majesty of the state itself as adversary.

What are the measures that we can adopt to remedy somewhat the intrinsic imbalances in the legal system? A few suggestions are outlined below.

#### + Legal Aid Guarantee Programme

One of the most important measures proposed is the enforcement of a legal aid guarantee programme in every case, criminal, civil, revenue, forest, excise, etc. where one party belongs to SC or ST community and the other is not SC/ST, even if the opposite party is the state itself. In fact, our proposal is that the law should be suitably amended to ensure that the presiding officer of any court should be legally debarred from proceeding with any case of such a nature until satisfactory legal aid is provided to the dalit litigant.

It may be argued that since such legal aid programmes already exist in most states, this measure would be superfluous. However, legal aid is at present implemented in a highly anemic, token form, through low-paid, demotivated lawyers lacking a brief. Further, such aid covers only a few of the wide range of suits involving the weaker sections.

What is being proposed here is a guarantee programme. Legal aid should no longer remain a matter of discretion in a small proportion of cases involving weaker sections. It should be recognised as an obligation of the state to provide adequate and effective legal aid in every case where a dalit is confronted with an unequal adversary, including the state.

Secondly, the lawyers must be paid at attractive rates closer to the prevailing market rate, and should be freely selected by the dalit litigant himself/herself from a panel of lawyers who volunteer and then are selected based on calibre, integrity and commitment by a panel of the District Judge and District Magistrate. This would ensure that the dalit litigant would be able to avail the services not of the rejects but of the best locally available legal talent. The involvement of the legal aid lawyer could be further reinforced by an incentive scheme for cases in which the judgement in the concerned court goes in favour of the dalits.

In atrocity cases, it is often the experience that because of overwork and lack of social orientation, public prosecutors do not ensure a high and rigorous quality of prosecution. Here again an extensive panel of senior and experienced lawyers may be set up with the selection of special public prosecutors in each atrocity case with the consent of the concerned victim of atrocities.

It is believed that only a legal aid guarantee programme where the operational words are guarantee and consent of the litigants would ensure that dalit litigants have any genuine access to the legal system to redress the many injustices to which they are victim. This legal aid guarantee programme should also include travel expenses and daily allowance for the litigant and witnesses for journeys to the police stations and the courts and copying fees, etc.

Support to Public Interest Litigation and Voluntary Organisations
 It is now a well-established principle that persons who are

disadvantaged because of social or economic disabilities may not themselves seek redress against injustices. This fact has been brought out by social activist Nandita Haksar in the context of bonded labourers. 'It is hardly likely that a bonded labourer working in a stone quarry will even think of moving the Supreme Court. Bonded labourers are non-beings, exiles of civilization. The bonded labourer has no hope. A human being without hope cannot dream of going to the Supreme Court. It is only a socially committed individual or a politically aware organisation that can speak on his behalf' (National Commission for Scheduled Castes and Scheduled Tribes 1990).

In the highly unequal fight that often faces dalits, activist voluntary organisations wherever they exist, have been found to provide valuable legal and moral support to the victims, giving legal guidance, ensuring that cases are registered, that the victims and witnesses are not pressurised, that investigations are not deliberately delayed, and so on. The state should provide financial and administrative support to such NGO groups, and may even take the initiative for encouraging such NGOs to come up where they do not exist, especially in atrocity-prone areas.

The law now recognises the right of any public-spirited individual or social action group to move a writ petition for the enforcement of the legal rights of a disadvantaged group. Our legal aid programmes should also now broaden the ambit of their agenda to support such public interest litigation in consonance with this.

Measures for Improving Response of Law and Order Machinery We have already noted how a highly demotivated, overburdened and often deeply prejudiced law and order machinery results in difficulties in registration of complaints, poor quality of investigation and high rate of acquittal in atrocity cases. A series of measures are proposed to attempt to make a dent in this problem.

The police administration already has a well-developed system of monetary rewards and medals as tokens of recognition for good work done. It is necessary to only consciously orient this reward system to accord high priority to and encourage prompt, impartial The Ripped Chest Dalit Status and State Interventions

and effective investigations in atrocity cases. For instance, for investigations in atrocity cases that end in conviction, attractive rewards may be instituted for the investigating officer. Medals may be also awarded for consistently high quality of investigation in cases involving weaker sections.

Postings to special police stations for weaker sections, as also in SC cells are normally considered a matter of punishment at all levels. It is proposed that a substantial special allowance be given for postings to these police stations and cells, and that at least one year's posting in the SC sections be made mandatory for qualifying for every level of promotion.

It is also necessary to consciously reduce the mechanical reliance on crime statistics. A higher rate of registration of cases of atrocities for instance, may reflect not a declining security environment for dalits as it may superficially appear, but on the contrary a more responsive police administration with registration of atrocity complaints, where they were simply not being registered.

Like gender sensitisation programmes for government officials at all levels, a package of training programmes should be regularly organised at all levels of the regulatory, police and development state machinery, as also the judiciary, to attempt to sensitise them and influence attitudes towards the weaker sections.

Vigilance Committees should also be established at *thana* and district levels, comprising on the one hand members of the executive and judicial magistracy and the police, and on the other, elected representatives, NGOs and representatives of educated local youth and weaker sections, to oversee registration of complaints, investigation and progress of cases. For instance, if a dalit is unable to register an atrocity complaint in the police station, he or she should have access to appeal to the committee, and the committee in turn should be suitably empowered to make necessary recommendations to the station house officer.

#### + Other Recommendations in relation to Atrocities

The National Commission for SCs and STs, April 1990, has made

a number of other recommendations in relation to atrocities, which need to be followed up. These include:

- Revocation and suspension of gun licenses in places where atrocities have occurred
- ▼ Liberal invocation of provisions of Bonded Labour System (Abolition) Act, 1976, and other such measures, vesting of powers with executive magistrates wherever such provisions exist, and resort to summary trials
- A review of debt relief legislation on an all-India basis and issue of guidelines incorporating salutary features of various state enactments
- ▼ Instead of opening special police stations for SCs/STs, special police officers of Assistant Sub-Inspector (ASI) or head constable rank be posted in all police stations for such cases
- Establishing itinerating special courts exclusively for atrocity cases.

# **→** Mass Legal Literacy and Mobilisation for Legal Action

Strong protective laws for weaker sections, even when backed by a legal aid guarantee programme of the kind proposed above, are necessary but not sufficient to ensure that the weaker sections actually resort to these legislative measures to secure justice. These are enabling conditions, but there is no substitute for mass legal literacy and mobilisation for legal action.

In the absence of adequate public action, it is necessary for a humane state committed to social justice to intervene effectively to ensure such legal literacy and mobilisation. This is relatively unmapped territory, and such strategies require imagination, creativity and social sensitivity.

#### Positive Discrimination: The Policy of Reservations

Probably the most controversial, and indeed, resented policy for SCs (and STs) is reservation in government services (provided for in Article 335 of the Indian Constitution). Reservations, or a mandatory quota, for SCs (and STs) in all elected seats and in

educational institutions, together constitute an ambitious policy of positive discrimination in favour of historically disadvantaged groups. In this section, we will look more closely at the rationale, and implementation, of this policy in relation to government services, an arena that has faced the most bitter opposition from the upper castes.<sup>11</sup>

For groups that have suffered centuries of discrimination, entry into prestigious government office is *de facto barred* unless a certain proportion of these positions are exclusively set aside for people belonging to these disadvantaged groups. Although elements of this policy, strongly advocated among others by Ambedkar, were in position even prior to Independence, they received the sanction of the Indian Constitution, and the proportion was fixed roughly in the ratio of these groups to the overall population. Thus, to date, SCs enjoy reservations at all levels of government office of about 15 per cent.

It is significant that despite such minimum statutory requirements, enforcement has been slow, and the statutory levels have not been achieved fully particularly at senior levels of government. (See Table 5)

However, the success of the policy in its stated objectives can be assessed from a comparison with branches of public service in which reservations are not mandatory, only recommended. The latest figures available for the armed forces are for 1981 (quoted in Mendelsohn and Vicziany 1998), according to which only 0.44 per cent of officers in the army and 0.16 per cent in the air force were from the SCs. In universities, in 1986, only 13 out of 2,133 professors, 34 out of 3,261 readers and 169 out of 5,341 lecturers were from among the SCs. Before nationalisation of banks, only 0.81 per cent class I officers in the Reserve Bank of India in 1973 were SCs. It would be safe to assume that without reservations the situation would not have been significantly different for government offices at all levels, which are greatly sought after as sources of prestige, authority and secure livelihood.

One of the main and at one level, one of the most persuasive arguments advanced against a policy of reservations, is that this policy

Table 5

Employment of SCs in government of India

	1953	1963	1974	1980	1987
Class I	20	250	1094	2375	4746
	(0.35%)	(1.78%)	(3.2%)	(4.95%)	(8.23%)
Class II	113	707	2401	5055	7874
	(1.29%)	(2.98%)	(4.6%)	(8.54%)	(10.47%)
Class III	24819	84714	161775	235555	307980
	(4.52%)	(9.24%)	(10.3%)	(13.44%)	(14.46%)
Class IV	161958}	151176	230864	247607	234614
	(20.52%)	(17.15%)	(18.6%)	(19.4%)	(20.09%)

Source: Reports of the Backward Classes Commission, 1955 and the Commissioner for Scheduled Castes and Scheduled Tribes, 1963–1964, 1974–1975 and 1986–1987; in Mendelsohn and Vicziany, 1998.

continues to benefit only a small elite among the SCs, and STs. For example, Ashok Guha (1990) argues that given that only a small minority of such underprivileged groups manages to complete high school or university education and thereby qualify for senior government positions, 'the egalitarianism that reservationists flaunt is pure fiction'. According to this view, while 'the rhetoric of reservation is addressed to the mass of the underprivileged, its rewards are 'reserved' for the wafer thin affluent upper crust of OBC society' (Guha 1990: 2714).

This perspective implicitly assumes that the rationale of reservations in government service is to facilitate the socio-economic upliftment of backward sections. However, as Omvedt (2000) argues

There is no country in the world outside of India that has accepted the notion that government employment is a logical or legitimate way of dealing with the problems of poverty! The whole concept is somewhat fantastic; removing poverty requires broad-level economic policies, including those for growth and those directed at mass education and mass access to resources including land and forest wealth. Taking a few of the poor out of poverty by providing government employment for them is a mockery (Omvedt, 2000).

The rationale for reservations instead is that except in highly industrialised pockets of the country, government service remains a highly sought after symbol of power and respect. It is an avenue of advancement from which the deprived castes were almost completely debarred for centuries. The fact that these positions of high prestige and authority can now be held by members of their community is expected to strengthen the morale, self-respect and confidence of the entire community.<sup>12</sup>

A second argument that is widely made in opposition to reservations is that it militates against merit and efficiency, to the detriment of wider public interest. This in fact was the issue taken up in the street demonstrations by upper caste youth in the early 1990s, supported by almost the entire mainstream media. In an impassioned critique of this position, leading civil rights activist K Balagopal wrote during the height of this agitation:

Everybody has suddenly made the unbelievable discovery that there is some thing called 'merit', which has been in the possession of the Indian elite all these days. For four full decades it is the forward caste Hindus who have dominated every aspect of life in the country. They have held all the land, all the capital in trade, finance and industry, they have held all the top positions in administration, education, science, technology and medicine, and what a pass they have brought the country to! ...And it is these people who today claim that if others are allowed to get in, that will spell the death of development for India (Balagopal 1990: 2231).

Kancha Ilaiah (1990) argues that in the context of the senior administrative services merit cannot be judged on the basis of relative position in a rank list based on a written examination.

Indian administrators are supposed to bring about social change to which the Indian Constitution is committed. To change caste inequalities we require a person who can understand the humiliation that the caste institution confers on some. Surely, one who suffered from this system can do the job better? The second thing that the civil servant is expected to do is to change land relationship, in an agrarian society like ours. The government has to distribute the land to the landless having, uncompromisingly, acquired it from the landlords. Except in few states, by and large the landlords belong to

upper castes and the landless belong to the SCs, STs and Backward Classes. In this situation which officer will be able to do this job effectively? Obviously one who has some sympathy for the landless poor (Ilaiah 1990: 2309).

The justice of allocating valued positions in society according to 'merit' principles has enjoyed wide support also in liberal western philosophy. James Fishkin (1983) defines the merit principle as entailing 'widespread procedural fairness in the evaluation of qualifications for positions'.

Iris Young (1990), however, challenges what she describes as the 'myth of merit'. She argues that impartial, value neutral, scientific measures of merit do not exist, because most criteria of evaluation, including educational qualifications and standardised testing, are laden with normative and cultural content.

If we acknowledge that merit is more than skills and training, an important argument in favour of reservation is that in the public sector it is necessary to ensure that the administration is sensitive to the needs and rights of disadvantaged sections. As regards the 'efficiency' issue, it may be worth mentioning that for most forms of public employment there is a tremendous 'excess supply' of applicants. So reservation can be applied without lowering the qualifications. Also, in some context (e.g. academic institutions) an individual 'reserved' appointment may conceivably reduce efficiency for that particular post, yet social diversity may enhance the 'efficiency' of the staff as a whole (i.e. diversity is an aspect of efficiency).

However, Omvedt (2000) also offers a powerful argument about the limitations of the policy of reservations in public employment as it is presently designed and implemented. Using a historical perspective on the demand for reservations, she shows that the incorporation of the oppressed communities into the public sector is not merely about extending to them the patronage of power, but an intrinsic part of a much larger process of reform of a 'corrupt, bloated, overpaid' public sector (Omvedt 2000). If all that is done is to widen the social base of recruitment to the civil services, but in other ways its structure, culture

and procedures remain fundamentally anti-poor, reservations by themselves can do little to actually include historically disadvantaged groups into governance.

In summary, then, one of the most visible successes of public policy in support of oppressed groups in India, has been its policy of positive discrimination, particularly reservations in prestigious government employment. The opposition to this policy has been mostly on spurious grounds of merit, efficiency and elitism. Its real weakness is that it has not gone far enough, not only in opening more fully the doors of public services, including the judiciary and the armed forces to historically disadvantaged groups, but even more importantly in reforming the public services themselves to make them real vehicles of social transformation.

# Budgetary Mechanisms: The Special Component Plan

The device of the Special Component Plan (SCP) was introduced into the budgetary mechanism to ensure the earmarking of separate plan outlays for the development of SCs. Whereas this has ensured the allotment of substantial plan funds for SCs, the proportion of the SCP in the total plan budget is still well below the percentage of SCs in the total population of most states.

Table 6

State plan outlays since the sixth five-year plan

Period	Percentage of SCP outlay to state plan outlay	Percentage of SCP expenditure to SCP allocation
Sixth plan	7.67	81.86
Seventh plan	8.31	93.08
1992–1993	9.90	86.88
1993–1994	11.26	82.31
1996–1997	11.04	76.97

Source: Ministry of Welfare, 1997-1998, Govt. of India

However, far more serious are the grave distortions in the implementation of the SCP strategy. One common pathology is the widespread tendency for the allocation to 'lapse', in other words, for the concerned department to fail to spend the budgeted SCP funds. Even more problematic is the propensity of the large majority of departments to mechanically book programmes which are not even remotely connected with the welfare of SCs under the SCP. Such diversions can be achieved with even greater impunity than for the Tribal Sub Plan (TSP), because dalits do not live in geographically contiguous areas; instead their settlements are highly dispersed through most regions. Therefore, it is possible to portray almost any general infrastructural programme as one whose benefits accrue to the SCs. This ensures only a mechanical adherence to form, with a complete subversion of content.

The state has been somewhat more successful in ensuring the targeting of a significant share of poverty alleviation programmes to SCs. According to the 1997–1998 Annual Report of the Ministry of Rural Areas and Employment, it is stipulated that 35 per cent of the total coverage under the Integrated Rural Development Programme (IRDP) should be of SC families with another 15 per cent for STs. Further, under the Jawahar Rozgar Yojana (JRY), 22.5 per cent of the funds devolved to the district and panchayat levels are required to be spent on creation of assets directly beneficial to SC/STs. Similarly, 50 per cent of the benefits under Development of Women and Children in Rural Areas (DWCRA) are earmarked for SC/STs. The actual allocation of benefits under the main wage-employment schemes, JRY and Employment Assurance Scheme (EAS) are indicated in Table 7.

It must be recognised also that government statistics in these programmes often distort and hide the real impact of these programmes on the beneficiaries. The limitations of self-employment strategies such as IRDP apply even more acutely to the most economically and socially deprived categories, but the significance of wage-employment programmes especially with a food-for-work component for these groups cannot be underrated.

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Table 7

Percentage share of SCs in employment generated under JRY and EAS

Scheme	Period	Percentage share of SCs (in humandays)
JRY	1992-1993-1995-1996	36.92
	1996–1997	34.49
	1997–1998	38.20
EAS	1993-1994	12.21
	1995–1996	28
	1996–1997	31.96

Source: Ministry of Rural Areas and Employment, 1997-1998, Government of India

There is no doubt that the SCP strategy needs fundamental restructuring. First, the SCP component of the plan budget should be in some proportion to the SC population in the state. Further, it should be separated at the outset from the general budgetary mechanism, and taken out of the purview of various government departments. Instead, it should be almost completely decentralised to the districts in proportion to their respective SC populations. In the districts, these large untied funds should be used exclusively for programmes meeting felt needs of direct benefit to SCs.

Dalits continue to be victims of untouchability as well as abject poverty in large regions of the Indian countryside. Dalit settlements are frequently denied access to basic water, primary schools, health facilities, approach roads, internal drainage, electrification, etc. although many of these may have been created out of SCP funds. Therefore, priority needs to be accorded to identifying SC concentration settlements, both in villages and towns, and ensuring that minimum needs and basic facilities are systematically provided to these. After careful identification of SC-dominated bastis (taking not revenue villages but actual settlements as our basic unit) SCP funds should be utilised exclusively for time-bound projects for providing all basic needs of these settlements. The same approach needs to be extended also to urban slums, which usually have a high

proportion of dalits, but which are totally deprived of even minimal human facilities.

# Health and Education Strategies

As we saw at the outset, literacy levels among dalits, and especially among dalit women, are abysmally low. A major component of state intervention for dalits has therefore focused on raising literacy and educational standards among SCs. The principal strategies have been providing incentives like scholarships, freeships, mid-day meals, etc., establishing SC hostels, reservation of seats and relaxation of standards for admission to institutes of higher learning, remedial coaching and special coaching for competitive examinations (Ministry of Welfare 1997–1998).

Policy makers have tended to regard almost all these strategies are basically sound in conception (with the proviso that far greater stress needs to be placed on quality as also the magnitude of the effort). However, social commentators like Jean Dreze challenge this assumption. In a note to me, he writes, "It's disturbing to think that right from primary school children are differentiated by caste. I'm inclined to argue for universalism at school (e.g. textbooks for all). All the more so, because in any case, the children who attend government primary schools are, increasingly, children from SC families and other disadvantaged groups."

In my view, there is particularly one specific strategy, which calls for considerable rethinking. This is the establishment of separate SC hostels. Whereas separate hostels make enormous sense for tribals, because of the remoteness and extreme dispersal of their settlements as well as their distinct cultural identity, a mindless and mechanical duplication of this strategy for SCs is producing perverse results. As we saw at the beginning, the central aspiration of the dalit is for reintegration into the social order on terms of social equality and dignity, whereas separate hostels only provide state sanction to their segregation. A better alternative would be for the state to sponsor general hostels for indigent and meritorious students, with substantial reservation of seats for SC boys and girls.

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Existing educational and literacy programmes also need to be restructured for all sections of the rural poor in line with the new approaches in this sector, with stress on mass mobilisation and participation, voluntary support, flexibility and innovation.

This applies also to public health delivery systems, except that it can be assumed that SC settlements have even less access to whatever minimal health infrastructure is available than the general population. By and large, the same remedial measures would apply as for general rural and slum populations, except that even more careful targeting of these services would be naturally required for specially disadvantaged categories.

#### Liberation from Traditional 'Unclean' Occupations

As we have already seen, the anguish of the socially oppressed dalit is most acutely experienced by those still trapped in traditionally 'unclean' occupations, such as sweeping, scavenging, tanning and flaying, disposal of carcasses, prostitution, etc.

The beginning of the end of untouchability is possible only when specific castes traditionally engaged in 'unclean' occupations are fully liberated from these professions. Though this problem has not received sufficient attention in the past, insofar as some action has been taken, the main reliance has been on technological solutions to an intractable social problem. These include the conversion of dry latrines into flush latrines, and supply to scavengers of wheelbarrows, handcarts and other implements such as gumboots, gloves and buckets, to reduce the need for scavengers to directly handle shit. Though these measures in no way go to the heart of the problem, progress even here has been halting and tardy. Only as recently as 1991 has a centrally sponsored scheme been launched to systematically survey and release scavengers from their traditional occupations.

Part of the reason for this is a widespread belief, even among policymakers, that traditional scavengers do not want to be released. We have already noted the tragic trap in which the scavengers are caught, in that if they seek social dignity they have to accept economic insecurity by abandoning a profession over which they hold a virtual

monopoly, whereas if they cling to economic security, they remain victims of untouchability even in the otherwise anonymous and mobile socio-economic environment of cities.

Therefore, it is simplistic to suggest that routine loans for alternative economic activities will be adequate intervention for liberating scavengers. It will be necessary to motivate them to accept the risks of breaking free from their traditional occupations. Therefore, the state has a special responsibility to carefully nurture these new ventures and ensure that they do not fail.<sup>13</sup>

In the experience of this author, based on extensive action fieldwork in scavenger bastis throughout the state of Madhya Pradesh, when appropriate schemes were instituted, these communities were eager to acquire new skills and were willing to accept some risk and even lower remuneration. Educated youth from families traditionally engaged in scavenging were helped to develop skills in computers and electronics, and women were trained in handicrafts such as hand-printing and dyeing (the state handicrafts corporation guaranteed marketing support for this). The extraordinary pride and speed with which they acquired these alternative skills should set at rest all misgivings about their motivation, or of the feasibility of the task.

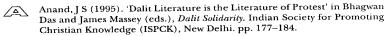
#### Endnotes

- 1. Quoted from the poem *To Be or Not to Be Bor* by L S Rokade in Arjun Dangle (ed) 'Poisoned Bread' translation from Modern Marathi Dalit Literature.
- The term was first used by the most revered leader of the community of the twentieth century, Dr. Babasaheb Ambedkar. It is now the preferred usage especially by dalit and human rights activists. Massey (1995) provides a wideranging discussion of the etymology of the word.
- 3. Though earlier literature refers to the caste system and reveals some of the popular prejudices associated with the lower castes (see for instance, Massey 1995), it is the *Manusmriti*, composed between the first and eighth centuries AD, that represents the most comprehensive and strict codification of these practices.
- 4. 'Downtrodden among the downtrodden' is how Ruth Manorama (1994) describes the position of dalit women in Indian society. Pawde (1995) in the

same volume offers an interview study of dalit women that reinforces the substance of this description.

- 5. The elected Marxist government of West Bengal is best remembered for its campaign to record and accord security of tenure to tenants).
- 6. Human Rights Watch (1999) describes how in 1995 the Gujarat-based NGO Navsarjan initiated legal action on behalf of thirty-five safai karmacharis in Ranpur town, Ahmedabad district, charging government officials with negligence in allowing the outlawed practice of manual scavenging to continue. In an affidavit the state government responded by claiming that the practice no longer existed in the state. In 1998 the Gujarat High Court describing as 'unfortunate' the government's actions in filing a false affidavit denying the prevalence of the practice.
- 7. For a discussion of dalit protest literature, see Anand (1995).
- 8. The term Naxalite derives from a village in north Bengal called Naxalbari, where a movement based on a strategy of annihilation of individual class enemies erupted in the mid-1960s. The movement has almost died out in West Bengal, which for two decades has been led by an elected Marxist government bitterly opposed to the Naxalites. But the same ideology, under a variety of splinter organisations, continues to attract support in other states, most notably Andhra Pradesh, Bihar and Madhya Pradesh.
- 9. In one of the largest of such massacres, on the night of December 1, 1997, the Ranvir Sena shot dead 16 children, 27 women, and 18 men in the village of Laxmanpur-Bathe, Jahanabad district Bihar. Five teenage girls were raped and mutilated before being shot in the chest. The villagers were reportedly sympathetic to a Naxalite group that had been demanding more equitable land redistribution in the area (Human Rights Watch 1999). For a discussion of the origins and aims of the Sena in the political landscape of Bihar, see Louis (2000).
- 10. These and other constitutional and legal provisions and enactments aimed at protection of *dalits* are discussed extensively in Human Rights Watch (1999), with full texts given in the appendices.
- 11. There is increasing interest in reservations in the private sector, as government employment is slowly expected to shrink and private sector employment to burgeon. However, since this is not yet state policy for the most part, it is not included in this discussion. However, for those interested, please see particularly Gail Omvedt (2000) on this.
- 12. In a personal and well-reasoned account, Kancha Ilaiah (1990) provides a highly persuasive analysis of this process.
- 13. In many other programmes, unemployed impoverished families are assisted to improve its economic status by entering the formal sector, as this provides the most secure livelihood. Here a safai karmachari already securely entrenched in the formal sector, is being motivated and assisted to enter the informal sector.

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# Pulling Back From the Brink? TRIBAL POLICY

Constituting about eight per cent of the total population of India, the tribal peoples are among the most vulnerable groups in the country. Not only do they share with other disadvantaged groups the common travails of economic deprivation, they are also faced with a grave threat to their cultural integrity and socio-political freedoms. Unlike the SCs for instance, whose main problem is to find a place of dignity and equality within mainstream society, the central problem of tribals has been to cope with the consequences of the brutal and destructive way that their relative isolation from the mainstream has been broken down.

Though this isolation has historically never been absolute, particularly for tribes in West, Central or South India, tribal communities managed to retain a distinct identity of their own through centuries of interaction (albeit limited) with the mainstream. The specific set of factors that came to threaten this independence in a serious fashion, however, arose only with the advent of the colonialism, with the single most important factor being the introduction of state ownership of forests by the colonial government, a policy continued by the post-colonial state.

In effect this policy, represented the first but most significant attack on the livelihood base of tribal communities. Post-independence, the requirements of planned development brought with them the spectre of dams, mines, industries and roads on tribal lands. With these came the concomitant processes of displacement, both literal and metaphorical – as tribal institutions and practices were forced into uneasy existence with, or gave way to market or formal state institutions (most significantly, in the legal sphere), tribal peoples found themselves at a profound disadvantage with respect to the

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influx of better-equipped outsiders into tribal areas. The repercussions for the dready fragile socio-economic livelihood base of the tribals were devastating – ranging from land alienation on a vast scale to hereditary bondage.

As tribal people in India perilously, sometimes hopelessly, grapple with these tragic consequences, official tribal policy continues to grope confusedly in a vain attempt to find the golden mean between the two extremes of isolation and assimilation. The enlightened rhetoric of the policy after Independence has been translated into a small clutch of bureaucratic programmes, which have done little to assist the widely encountered pauperisation, exploitation and disintegration of tribal communities. As tribal people respond occasionally with anger and assertion, but often also in anomie and despair, the only ray of hope lies in the radical law guaranteeing self-rule, the Panchayats (Extension to Scheduled Areas) Act, passed by the Indian Parliament in the winter of 1996.

This chapter will attempt to briefly describe the grave and complex predicament of tribal communities in contemporary India, and the legislative and policy interventions, which have been designed to address these problems. It will end with a description of the Panchayats (Extension to Scheduled Areas) Act, 1996 (also called (PESA) and its potential to reverse or at least restrain some of the elements in the tragedy of the tribal people in India.

#### Tribes in India

A considerable part of the ethnographic literature on tribes in India is preoccupied with the definition of a tribe, and the relevance of this definition to the Indian situation. Loosely, 'a tribe is a social group the members of which live in a common territory, have a common dialect, uniform social organisation and possess cultural homogeneity, having a common ancestor, and shared systems of political organisation and religious pattern' (Chaudhuri 1990: vi). As would be evident, this definition does not take us very far as it could be applicable to many types of communities. Given the wideranging debate in anthropological circles over the very notion of a

tribe as well as the tremendous diversity across tribal communities, it would be sufficient for our purposes to use the self-definition adopted by the Indian Council of Indigenous and Tribal Peoples (ICITP) in a 1992 symposium: 'peoples whose political and social organisation [is] based primarily on moral binding among kins, real and putative, who [have] a custodial attitude towards nature and [are] outside the *Jati* (caste) *Varna* system' (Roy Burman 2000: 73). This is a characterisation that emphasises the tribal person's 'extension of self not only to kins' but also to his/her community including 'the endowments of nature in the territories with which they have a special association through life cycle events and through activities related to the life support system'. Thus, this relationship with the human and natural environment <sup>3</sup> is a defining feature.

As against this self-characterisation, the relevant administrative category for purposes of policy is the Scheduled Tribes. According to the definition given by Article 342 of the Constitution of India, the Scheduled Tribes are the tribes or tribal communities or part of or groups within tribes and tribal communities which have been declared as such by the President by public notification<sup>4</sup> (Government of India 1998–1999: 31).

Further, certain areas were declared as 'Scheduled' under the Fifth and Sixth Schedules of the Constitution and subjected to special administrative arrangements for the protection of tribal communities. The criteria for declaring any territory as 'Scheduled' adopted by the sub-committee of the Constituent Assembly included:

- + Preponderance of tribal population
- + Stage of advancement and degree of assimilation
- To a slightly lesser extent, the susceptibility of these areas to special administrative treatment.

A somewhat modified basis was, however, recommended by the Commission for Scheduled Areas and Scheduled Tribes, 1960 (also known as the Dhebar Commission) emphasising preponderance of tribals in the population (50 per cent), compactness and reasonable size, underdeveloped nature of the area and marked disparity in

economic standards of the people. However, nowhere in the Constitution have 'tribes' been defined and therefore, the updating of lists of Scheduled Tribes and Scheduled Areas has been an ongoing administrative exercise since 1950.

In the Sixth Schedule, tribal areas in the states of Assam, Meghalaya and the Mizoram, Autonomous District Councils and Regional Councils were constituted with powers to make laws for management of land, forest, shifting cultivation, appointment or succession of chiefs or headpersons, inheritance of property, marriage and divorce, social customs and any matter relating to village or town administration. The Fifth Schedule was initially made applicable only to the states of Madras, Bombay, West Bengal, Bihar, Central Provinces and Berar, United Provinces and Orissa.

It was in 1976 that the Fifth Schedule was extended to cover tribes living in the states of MP, Bihar, Orissa, Rajasthan, Gujarat, Maharashtra and Himachal Pradesh (Sharma 1995). However, administrative laxity and parochial political considerations have continued to dominate, as in parts of Andhra Pradesh, and in West Bengal, Karnataka, Kerala and Tamil Nadu, many regions of tribal concentration are still not scheduled.

As mentioned earlier, the 1991 census enumerated the total population of the country as 846 million, out of which the population of STs was 68 million, constituting 8.08 per cent of the total (Government of India 1998–1999: 31). India is by this count, home to more tribal people than any country in the world, exceeded only by the continent of Africa taken as a whole.

This is a significant number in absolute terms but certain other aspects of tribal populations in India are equally noteworthy. Tribal communities are dispersed in most parts of India, except in the states of Haryana, Jammu and Kashmir, and Punjab, and the Union territories of Chandigarh, Delhi and Pondicherry. Chaudhuri (1990) identifies six major regions of tribal concentration, as follows:

▼ North-eastern region: In the mountain valleys and other areas of north-eastern India, covering the states and Union Territories

like Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura live tribes like the *Abor, Garo, Khasi, Kuki, Mismi, Naga*, etc.

- Himalayan Region: In the sub-Himalayan regions covering parts of North-Bengal, Uttar Pradesh and Himachal Pradesh live tribes like Lepcha, Rabha, etc., mostly belonging to the Mongolian racial group.
- ▼ Central India region: In the older hills and Chotanagpur Plateau, along the dividing lines between peninsular India and the Indo-Gangetic basin, live many tribal communities like the Bhumij, Gond, Ho, Oraon, Munda, Santal, etc., covering the states of Bihar, Orissa, Madhya Pradesh and West Bengal and mostly belonging to Proto-Australoid racial stock.
- Western India region: Covering the states like Rajasthan, Maharashtra, Gujarat, Goa, Dadra and Nagar Haveli live a number of tribal communities, the most important of them being the Bhil, racially belonging to the Proto-Australoid group.
- ▼ Southern India region: Covering the States of Karnataka, Andhra Pradesh, Tamil Nadu and Kerala, in the Nilgiri Hills and converging lines of the Ghats live the *Chenchu, Irula, Kadar, Kota*, Kurumba, *Toda*, etc., having Negrito, Caucasoid, Proto-Australoid or mixed physical features.
- ▼ Island region: Covering Andaman, Nicobar and Lakshadweep Islands live a number of small tribes like the *Andamanese*, *Onge*, *Sentinelese*, etc (Chaudhuri 1990: viii, x).

However, Shah et al (1998) stress that 'in most areas of tribal concentration, except the North-East, Dadra and Nagar Haveli and Lakshadweep, tribals constitute a minority of the population of the region' (Shah et al 1998: 142). Further, 92 per cent live in states/Union Territories where they form less than 25 per cent of the population (Shah et al 1998: 144).

In all 10 states with the highest absolute numbers of tribal people, tribals are consistently in a minority. This has serious repercussions for their political bargaining power.

The sheer diversity of STs is another barrier to their political mobilisation. According to the 1981 census, there are more than

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700 tribes in India. Numerically, the three largest tribes are the Gonds, Bhils and Santals, with population ranging from 3 to 5 million each. Other large tribes are the Oraons, Meenas, Mundas, Khonds, Bodos, Kolis and Hos. At the other end of the spectrum are tribes like the Great Andamanese, which comprise less than 50 individuals.

# Dilemmas of Tribal Development Policy: The Historical Context

The outcome of the long process of subjugation of tribal people and regions, and with the coming of the British, of internal colonisation and resource emasculation is evident from the fact that in the 167 districts, 'with a tribal percentage which is at least as high as the national average, 94 per cent of tribals live in an area which is either dry, forested or hilly' (Shah et al 1998: 147–148).

The relative isolation of aboriginal tribals in 'refuge zones' (Raza and Ahmed 1990) was the cumulative result of centuries of subjugation of the aboriginal original inhabitants of India by successive waves of more powerful and endowed communities.<sup>5</sup>

During colonial times, the dominant policy of British administrators with regard to tribal areas was to safeguard their isolation in officially declared excluded or partially excluded areas. In practice, however, the policy of isolation was seriously compromised by the dominant concern of the colonial state for maximising revenue extraction, because regions of tribal concentration were typically the richest in terms of endowments of forest and mineral wealth. The policy of isolation translated itself into a general policy of non-interference with tribal customs and traditions, except where these became barriers to the extractive objectives of the colonial state. At the same time, the colonial administrators encouraged Christian missionaries, whose main ideology was of 'assimilation', albeit into Christianity, rather than the caste Hindu mainstream. Missionaries contributed very significantly by providing educational and health services in difficult and remote tribal regions. In the caste tribal regions.

In the initial years after Independence, there was at senior policy levels a degree of sensitivity to the central but chronically unresolved dilemma of tribal development policy. The most common metaphor to illustrate this dilemma is that of road construction: are these roads for development, to enable doctors, drinking water rigs and agricultural scientists to reach the difficult and remote regions of tribal habitation? Or are roads built to enable the predatory combine of traders, forest contractors, moneylenders, liquor manufacturers, politicians and government functionaries to access these regions to expropriate their forest and mineral wealth, agricultural land, produce and women?

After Independence, the senior political leadership in India particularly Prime Minister Nehru, sought to define the contours of a progressive and sensitive tribal policy that steered clear of the excesses of both 'isolationism' and the implied civilisational arrogance of `assimilation'. Nehru maintained that tribal people 'possess a variety of culture and are in many ways certainly not backward. There is no point in trying to make them a second rate copy of ourselves'. In seeking to bring to these communities the benefits of health education and communication, he said that 'one must always remember, however, that we do not mean to interfere with their way of life but want to help them to live it. The tribal people should be helped to grow according to their genius and tradition' (Mann 1980: 27).

This unusual sensitivity derived partly from the influence that anthropologists like Verrier Elwin had on the design of India's strategies of tribal development. Elwin stressed that in designing development programmes for tribals, their special cultural strengths must be respected and nurtured.

Here is a section of humanity, simple, tough and hardy, convinced of the wholesomeness of its own life. Their existence has depended during the centuries of their forest, mountain existence, upon the principles of challenge and response. Rigours of climate have not driven them away from their home lands nor obliged them to abandon their way of life. But they do not suffer from the obstinacy of adherence to the beliefs. They are open, frank and willing to change when faith and reason convince them that change is necessary (quoted in Ratha 1990: 111).

Elwin however was himself attacked, such as during a debate on Excluded Areas in the Legislative Assembly in 1936, for his alleged primitivism, for attempting to freeze the tribal people 'in a state of barbarism' and perpetuating their 'uncivilised conditions'. Decades later, he clarified that he had, no doubt, advocated a policy of temporary isolation for certain small tribes when India was under British rule. Elwin pointed that this was not to keep them as they were:

But because at that time the only contacts they had with the outside world were debasing contacts, leading to economic exploitation and cultural destruction. Nothing positive was being done for their welfare; national workers were not admitted into their hills; but merchants, moneylenders, landlords and liquor-vendors were working havoc with their economy and missionaries were destroying their art, their dances, their weaving and their whole culture (quoted in Ratha 1990: 106).

The search for an appropriate middle path of integration, falling between the two extremes of isolation and assimilation, was concretised in Nehru's landmark *Panchsheel* (or five-fold path, a term derived from Buddhist philosophy which stresses the appropriateness of avoidance of extremes, always seeking the golden mean). The five principles that he advocated for tribal development and integration were the following:

- ▼ People should develop along the lines of their own genius and we would avoid imposing anything on them. We should try to encourage in every way their own traditional arts and culture.
- ▼ Tribal rights in land and forest should be respected.
- ▼ We should try to train and build up a team of their own people to do the work of administration and development. Some technical personnel from outside will, no doubt, be needed, especially in the beginning. But we should avoid introducing too many outsiders into tribal territory.
- ▼ We should not over-administer these areas or overwhelm them with a multiplicity of schemes. We should rather work through, and not in rivalry to their own social and cultural institutions.

▼ We should judge results, not by statistics or the amount of money spent, but by the quality of human character that is evolved (quoted in Mann 1980: 28).

The Scheduled Areas and Scheduled Tribes Commission, headed by UN Dhebar (1960) later endorsed and elaborated this policy of integration as attempting

Not to disturb the harmony of tribal life and simultaneously work for its advance, not to impose anything upon the tribals and simultaneously work for their integration as members and part of [the] Indian family (quoted in Ratha 1990 140).

Despite such progressive policy rhetoric, with the singular exception of the North-East Frontier Agency (NEFA), the policy of integration was not implemented with any notable success in tribal India. For the opening up of the hitherto isolated, and strategically sensitive, tribal highlands of NEFA, a committed and trained group of exceptional officers were grouped into what was designated as the Indian Frontier Administrative Service. They closely interacted on a day-to-day basis with Nehru and Elwin. Elwin advised them, 'Integration can only take place on the basis of equality: moral and political'. Guha explains Elwin's philosophy

They must know the people, he said, know what stirred them, moved them, energised them. When on tour they must drink with the tribals... drink, he added significantly, from the same collective bowl (Guha 1999: 258).

It is significant that NEFA, now designated Arunachal Pradesh, remains the only state in the north-east which is not convulsed with militancy. Its 'tribesmen now are able to interact with the outside world with confidence and ease. Incidentally this is the only state in India where certain tribes have attained a hundred per cent level of literacy' (Ratha 1990: 106–107).

However, for the rest, tribal policy failed to extend protection to tribal communities from exploitation and expropriation, nor did it create conditions for their development according to their 'own genius'. In the next sections, we will observe the main elements of The Ripped Chest

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tribal development policy in India, and the actual performance with regard to each of these.

# Status and Problems of Tribes in India

Tribal people share with other disadvantaged groups most of the common burdens of poverty. The Planning Commission's estimates of poverty, based mainly on consumption flows, indicate that the proportion of persons below the poverty line among STs is substantially higher than the national average. The figures for 1993–1994 provide an illustration of this gap, which is significant even though narrower than the nearly 20 per cent level of 1983–84 (Planning Commission, 2000).

Table 8

Percentage of population living below the poverty line

	Rural	Urban	
Scheduled Tribes	51.92	41.14	
General	37.27	32.36	

Source: Government of India, 1998-1999.

Further, the higher proportion of the ST population (32.69 per cent) engaged in agricultural wage labour compared to the general population (25.74 per cent), indicates the livelihood vulnerability of tribal peoples and the problems caused by land deprivation (described below) and dependence on marginal, low-productivity land.

Tribal communities also suffer deprivation with regard to a crucial source of human capital – education. For example, in 1991, as against the national average of 52 per cent, the literacy rate of STs was around 29.60 per cent. More strikingly, over 80 per cent of ST women are illiterate (Planning Commission 2000).

However, from the viewpoint of policy, it is important to understand that tribal communities are vulnerable not only because they are poor, assetless and illiterate compared to the general population but also because their distinct vulnerability arises from their inability to negotiate and cope with the consequences of their forced integration

with the mainstream economy, society, cultural and political system, from which they were historically protected as the result of their relative isolation (see earlier section).

The process of internal colonisation that accompanied and subsequently survived imperial rule is best illustrated by the state-led resource emasculation of forests, the most important endowment of tribal communities for survival and livelihood. Even today, according to Saxena (1996) (quoting Lynch 1992), 'there are about a 100 million forest dwellers' and 'another 275 million who depend on the forest produce for their livelihood'. Though exact figures are not known, a substantial proportion of these would be tribals.<sup>9</sup>

Yet, considerations of maximising state revenues from forests have dominated forest policy from colonial times. Community control over forests was no longer recognised legally, and the state became the ultimate owner and custodian of forests. Forest dwellers became 'encroachers and trespassers,' as monoculture and clean felling for timber extraction dominated forestry operations. The conversion of complex forest into genetically simplified industrial plantations adds to state revenues and benefits industries, but a wide range of species critical to the survival and well-being of tribal forest dwellers are depleted severely and sometimes even lost forever.

Government has created new rights of industrialists to forest produce at highly subsidised prices. Saxena (1996) gives instances of industries being supplied bamboo for the manufacture of papers at one to five per cent of the auction rate, whereas purchase at auctions is the only source of bamboo for tribal artisans, such as the *Koya* of Orissa. State monopolies over collection of Non-timber Forest Products (NTFPs) have also followed this same pattern of maximising corporate interests and state revenue, at the expense of the subsistence of large populations of tribal collectors. In contrast to deregulation in the corporate sector, irrational barriers to the processing of NTFPs, even for the manufacture of brooms, leafs plates and *agarbattis* abound. <sup>10</sup>

In the process of internal colonisation, a fatal blow was the introduction of the legal regimes of private property to replace

age-old practices of various forms of community control, and individual access mediated by community assessment of individual needs. The cumulative result of this has been the massive and steady transfer of lands held in the past by tribal communities and cultivators into the hands of non-tribals. This process of expropriation has continued unabated especially since the turn of the century in all regions of the country in which agricultural and forest lands were held by aboriginal populations. Despite the enactment of laws in several states to protect tribal landowners from such exploitation, tribal land alienation has continued at a disastrous pace, both through loopholes in the law and in contravention of it.

Tribal land alienation is the most important cause of the pauperisation of tribal people, rendering their economic situation, which is extremely vulnerable even at the best of times, even more precarious. <sup>11</sup> We have already noted how the access of tribals to forests for their livelihoods has shrunk both because forests themselves have shrunk, and because the regulatory regime continues to restrict tribals from collecting and processing non-timber forest produce for their livelihoods. Shifting cultivation has also been severely restricted. The most important livelihood option of the tribal today is settled agriculture. However, as tribals are systematically deprived of their cultivable holdings, by non-tribals and even by government itself, they are reduced to assetless destitution.

The Department of Rural Development, Ministry of Rural Areas and Employment, Government of India commissioned in 1997–1998 conducted a number of state-specific studies of the problem, and reports have been received by the Ministry from Bihar, Andhra Pradesh, Madhya Pradesh, Gujarat, Rajasthan and Maharashtra.

The reports (as yet unpublished) paint a grim and disturbing picture, which confirm that massive alienation of tribal lands continues in tribal regions in all parts of the country. The magnitude of the problem can be assessed in the Andhra Pradesh report for instance, from the fact that today non-tribals own more than half the land in Scheduled Areas of the state. The figure is 52 per cent in Khamman district, 60 per cent in Adilabad district and 71 per cent in Warangal district. It may be noted

that these are official figures based on land records, and would not include 'benami' holdings in the names of tribals but held by non-tribals.

The continuing gravity of the problem in Madhya Pradesh has been assessed by the census, which reveals that the percentage of ST cultivators to total ST workers fell from 76.45 per cent in 1961 to 68.09 per cent in 1991. Correspondingly, the percentage of ST agricultural labourers to total ST workers rose from 17.73 per cent to 25.52 per cent. Similar empirical evidence is available from other states as well.

The studies commissioned by the Government of India have revealed the causal chain that leads to this state of affairs and confirmed that the fundamental reason for tribal land alienation is the fragile, constantly shrinking economic base of the tribals. Their traditional skills in the gathering of forest produce lost significance with the introduction of state ownership of forests, so that from food-gatherers they were reduced to wage-earners or encroachers. Private property in land extinguished the erstwhile right of tribal communities to free access to land in consonance with their needs. Settled agriculture brought with it its inevitable linkages with credit, inputs and markets, rendering the tribal even more dependent and vulnerable.

As the tribals have an innate fear based on bitter past experience of banks, cooperative institutions and other government sources of credit; they prefer the predictability of the moneylender despite his usurious interest rates. In any case, most banks and cooperative institutions are unwilling to provide consumption loans, and moneylenders are the only sources of consumption credit.

A combination of these factors lead to an extreme dependence on moneylenders on the part of the tribal, keeping him in perpetual debt and resulting in the mortgage and ultimate loss of his land. Though this phenomenon is common enough, another particularly tragic outcome of this indebtedness is the phenomenon of bondage, wherein people pledge their person and sometimes even that of their families against a loan. Repayments are computed in such terms that it is not unusual for bondage to persist until death, and to be passed on as a burdensome inheritance to subsequent generations.

The studies also establish the sad fact that government policy itself has, directly or indirectly, contributed to the phenomenon of tribal land alienation. It has been noted in several states that tribal land is being legally auctioned by cooperative credit societies and banks to recover dues. Auctioned land is purchased by non-tribals as well as rich tribals. Authorities responsible for regulating sale of tribal lands to non-tribals have been found to frequently collude with non-tribals to defraud the tribal landowners. The same collusion has deprived tribals of their rights to land in times of land settlement, or implementation of laws giving ownership rights to occupancy tenants.

Of the estimated 50 million persons who have been displaced since 1950 on account of various development projects, more that 40 per cent are tribals. These projects include large irrigation dams, hydroelectricity projects, open cast and underground coal mines, super thermal power plants and mineral-based industrial units. In the name of development, tribals are displaced from their traditional habitats and livelihoods with little or no rehabilitation, and are rendered destitute, bewildered and pauperised by the development process. <sup>12</sup> A K Roy (1982) poignantly describes the case of Jharkhand:

Darkness in the midst of light is Jharkhand... The area contains almost all the steel plants – Bokaro, Rourkela, Jamshedpur, all the power plants of the Damodar valley project and the Hirakud Dam of Orissa. There is no dearth of development, but only at the cost of the people there. Industries displace them, dams drown them, afforestation starves them (quoted in Shah 1990: 135).

Apart from a water policy which rests on the pivot of big dams, state policy on mining has also worsened the internal colonisation of tribal populations. Massive mining and industrial projects have displaced tribal cultivators from their lands and irrevocably disrupted the social fabric of their lives.

In large mining projects, tribals lose their land not only to the project authorities, but even to non-tribal outsiders who converge onto these areas and corner both the land and the new economic opportunities in commerce and petty industry. Even wage employment for local

tribals is rare. 'In Chotanagpur area, though the tribals constitute more than 50 per cent of the total population, there are not more than 5 per cent of them in the industrial working force. In some of the large firms like TISCO, Jamshedpur and Bharat Cooking Coal Ltd., Dhanbad, the tribals employed are less than five per cent' (Shah 1990: 135). As Anand (1993) puts it, 'Development for the nation has meant displacement, pauperisation, or, at its very best, peonage for the tribals'.

The result of these intermeshing cycles of exploitation is not merely the systematic and sustained immiseration of tribal communities. In most contemporary tribal communities in India, one can observe the painful tearing apart of social and cultural moorings.

As a result of social disintegration, the majority of tribal people are trapped in anomie and profound despair. Elwin spoke of a 'loss of nerve' among certain Central Indian tribes, S C Roy of 'a loss of interest in life' among the *Birhors* and the *Korwas* and J H Hutton of 'physical decline' among the *Andamanese* (Mann 1980: 33). There are symptoms of this also in the high degrees of pathological alcoholism observed in tribal areas which has replaced the traditional, joyous, social drinking, and in growing fissures in tribal value systems of integrity, mutual respect and harmony with nature.

Tribal communities from within have also not remained unaffected. Indeed, there is documentation of increasing stratification within traditionally tribal communities. As long as these communities were relatively isolated, the major divisions were horizontal, between clans, rather than vertical. However, in their close encounters with the caste Hindu civilisation, some tribes became Sanskritised and absorbed themselves into the hierarchical caste-system, regarding other tribes as inferior. Many tribes have also begun to practice untouchability. For instance, a Kabirpanthi Bhil would be unwilling to accept a girl for marriage from (or even food prepared by) Shambh Dal Bhils and from the non-Bhagat Bhils. Gender relations have also worsened with the assimilation (Mann 1980: 36).

These are also recent signs of success in infecting tribal communities with the sectarian virus. Years of work by religious fundamentalists have succeeded in driving a deep wedge between Hindu and Christian tribal communities in parts of Central India. The Rashtriya Swayamsewak Sangh (RSS), the national headquarters of whose tribal programme, the Banwasi Kalyan Ashram, is located in a Christian missionary stronghold in the remote district of Jashpur in Madhya Pradesh, has sought to persuade Christian tribals to 'return to Hinduism', in a militant ghar vapasi (homecoming) campaign. Positions have hardened also in the opposing Christian missionary camp. The resulting sectarian hatred that erupted in 1999 caught international headlines with the burning alive of Australian missionary, Graham Staines and his two small sons in a remote tribal settlement in Orissa, allegedly by Hindu tribal mobs. Tribal communities have in this way been drawn into campaigns of aggressive religious militancy as pawns ironically by a civilisation which excluded them for centuries.

The long history of penetration and profound disruption of tribal communities, the sustained and frequently brutal expropriation of tribal wealth, and the resultant anger and despair, have resulted in a situation in which many regions of tribal concentration are immersed in an unending cycle of violence. All states in the Indian northeast have been ripped apart by separatist, and sometimes sectarian, violence.

In many stretches of forested Central India, it is the People's War Group and an array of other *Naxalite* Marxist-Leninist outfits, <sup>14</sup> which continue to channelise tribal anger into violent resistance to state power. These regions are caught in a hopeless cycle of mutually retaliatory state and Naxalite violence: so-called police 'encounters' in which Naxalites are killed in cold blood by police personnel, and the regular killing by Naxalites groups of alleged 'police informers' and police personnel often through powerful land mines. <sup>15</sup> In some pockets, state authority and control have shown signs of near-collapse, and Naxalites have described these as 'liberated areas'. There is evidence that in areas of Naxalite influence, petty exploitation especially by government functionaries has been contained. However, it is still unlikely that there

is a clear and wide mandate within the local tribal communities for the perpetuation of violence either of the Naxalites or the state. Meanwhile, as violence from both sides nonetheless continues unabated, there seems no light at the end of the tunnel for local tribal communities condemned to survive in the crossfire.

# **Major Elements of Tribal Policy**

#### Legislative Protection

The importance of protecting the interests of vulnerable tribal communities was incorporated into the Indian Constitution. Article 46 of the Constitution enjoined the state 'to promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the SCs and STs, and protect them from social injustice and all forms of exploitation'.

There has been an array of federal and state-specific legislation for the protection of tribal communities and regions from exploitation since Independence. Some of these laws are specifically designed for tribal people, such as state-specific laws to prevent the alienation of tribal land to non-tribals. Some are relevant for both STs and SCs, such as the SCS and STs (Prevention of Atrocities) Act, 1989. Some apply to all disadvantaged groups, of which tribals would generally be expected to constitute a significant proportion. These would include state-specific laws to regulate moneylending 16 and to prevent usury, the Bonded Labour System (Abolition) Act, 1976, the Minimum Wages Act, 1948 and the Child Labour (Prohibition and Regulation) Act, 1986.<sup>17</sup> It is beyond the scope of this chapter to review the implementation of social justice legislation in India. It would be sufficient to note the persistence of tribal land alienation, usury, atrocities, bondage, child labour and low wages, suggesting that the array of progressive legislation has failed to extend adequate protection to tribal people. The reason for this failure is that law by itself cannot protect vulnerable groups and people.

The legal system is always notoriously weighted against the poor, more so tribals, for whom the entire legal system is an alien implant. In the absence of redistributive and other political strategies to empower The Ripped Chest Tribal Policy

tribal communities, the law by itself would inevitably have had a limited impact.

We may illustrate this with the performance of one set of laws which is designed specifically for the protection of tribal people, namely laws to prevent transfer of land from tribal to non-tribal people. Almost all state governments have passed laws regulating the transfer of land from tribal landowners to non-tribals. Most such laws require that prior permission of the Collector be obtained before such transfers are permitted. Examples of such laws are section 13A of the Bombay Land Revenue Code, section 165(6) of the MP Land Revenue Code, the Bihar Scheduled Areas Regulations, the Andhra Pradesh Scheduled Areas Land Transfer Regulations, and so on. In some states, like Andhra Pradesh and Madhya Pradesh, there is now a total ban on transfer of land from tribals to non-tribals in scheduled areas.

A second major set of legislations has been enacted to review transfers of land which occurred in the past from tribals to non-tribals, and to restore land to the original tribal landowners in case fraud or illegality is established. The strongest such law is section 170 (B) of the MP Land Revenue Code, 1959. We will look at the experience of the law in Madhya Pradesh, which has the highest concentration of tribal people and the most progressive law in this regard (Mander, mimeo)

The Madhya Pradesh Land Revenue Code, 1959 contained important provisions under Section 165(6) to protect tribals from such exploitation, but both through loopholes in the law and in blatant contravention of it, tribal land alienation continued at a disastrous pace. An important study by the Tribal Research Institute, Madhya Pradesh in 1973 concluded that 'while on the one hand section 165(6) of the MP Land Revenue Code (1959) prohibits transfer of land from aboriginals, the later part of the same section permits it under certain conditions. All other clauses in the interest of the aboriginals seem to be overshadowed by this and transfer of the land from the tribal to the non-tribal is a regular feature'.

The study notes that 46.3 per cent of cases in which the Collector gave permission to the tribal landowner to sell land was for the repayment of government loans. The reports states 'Indebtedness is

the main cause of land alienation. Actually what happens in the area is that tribals mortgage their land to non-tribals and take loans. They then take loans from the government and use then for repayment of private debts. Having failed to pay the loan due to government, they apply for permission to sell land, which is granted. In fact the sale is to the mortgagee, while on chapter it assumes the shape of innocent transfer for repayment of government loans'. The study further notes that 'the quantum of illegal (benami) land alienation from tribals to non-tribals is like that part of the iceberg that remains under the surface of water. Seemingly though the quantum of legal transfers is not very much, the incidence of illegal transfers not easily detectable is very high'.

The studies commissioned by the Government of India with regard to other states, referred to earlier, also establish that transfers of land from tribal landowners to non-tribals continued despite the various enactments, for a variety of reasons. Collectors or other agencies responsible for protecting the interests of tribals while regulating such transfers, in most cases did not apply their minds to issues of vital importance to the tribals. These include whether or not, the tribal had any other alternative livelihood, or sufficient land for viable cultivation even after sale, whether sufficient price was being paid, whether the sale was actually to enable repayment for usurious loans from moneylenders, etc. Legal transfers also took place by actions for recovery of dues and mortgages, by decrees of civil courts, misuse of provisions for settlement of occupancy tenants, settlement operations, etc.

In order to secure redressal and reversal of such systematic subversion of these protective laws, the Madhya Pradesh legislature in 1976 and then in 1980, introduced highly significant amendments in the Land Revenue Code, 1959 to secure belated justice to the dispossessed tribal landowners, particularly through the section 170(B) of the Code.

There were many powerful elements in this Section 170(B), some without parallel in any other state. It instituted *suo moto* responsibility of the revenue court to enquire into all transactions from tribal to

non-tribal, even without an application from the tribal. The burden of proof was shifted to the non-tribal to prove that fraud did not take place, and the presumption of the court supported the legal rights of the original tribal landowner. Appearance of advocates without permission has also been debarred in these proceedings. There is provision for a single appeal to the Collector.

Despite the existence of such a radical piece of legislation for social justice for tribals, its implementation in most districts of the state has not been in consonance with both the letter and the spirit of the law.

Land of which possession has been officially restored to the original tribal landowners forms only 12.65 per cent of the total land under dispute. But given the socio-economic realities facing tribals and their powerful non-tribal opponents, it is unlikely that even after receiving formal legal possession of even this small proportion of their erstwhile lands, tribals would have the local administrative and political muscle to ensure that they would retain possession.

In order to understand the actual experience with regard to the implementation of progressive measures to restore illegally expropriated land in Madhya Pradesh, we will rely on two unpublished studies by the Tribal Research Institute, Bhopal (TRI) (1983 and 1987–88), and the direct experience of this author in supervising the implementation of these provisions in six tribal districts and one tribal division of Madhya Pradesh.

#### Implementation Difficulties

Ambiguous and weak-kneed administrative will blocks effective implementation of the progressive legal measures designed to prevent land alienation. This failure operates in many ways. First, in most subdivisions in the state, cases have not been even initially registered under section 170(B) of the Code. This is in defiance of the mandatory responsibility placed on the SDO to *suo moto* register cases.

The situation is even more dismal with regard to *benami* transactions, in which land nominally owned by tribal landowners is in practice cultivated by non-tribals. Whereas such cases are common knowledge

in any village, they are rarely reported by *patwaris* and other local revenue officers or by the non-official committees which were set up for such local investigation by the state government.

Disposal of cases tends to be slow, and the large majority of cases tend to be decided mechanically in favour of non-tribals. A 1983 study of eight districts by the TRI reported that of the 4,118 cases registered in these eight districts, only 1,782 or 43.20 per cent cases were decided, of which 1,140 cases or 64.5 per cent were against the tribals. A close scrutiny of many of the cases decided in favour of non-tribals show that disposal has been frequently in contravention of the law.

Further, the 1983 study also revealed that in the majority of cases decided in favour of tribals, they had not secured actual possession because of threats and violence by the non-tribals in possession of the land, and delays and complicity of local revenue functionaries. The 1987–88 study reported that fresh cases of tribal land alienation have considerably reduced under the impact of protective legislation, but restoration of land already lost is tardy.

The second set of problems relates to the nature of our legal system which, even in the context of sensitive and pro-poor legislation like the Sections 170(A) and 170(B) of the Madhya Pradesh Land Revenue Code, 1959 tends to be strongly weighted against the tribal poor. We have seen how the Code restricts litigation to a single appeal, but non-tribal litigants easily get around this restriction by resorting to revisions which are not barred. However, typically the legal system is systematically misused to harass and tire out tribal litigants. The restriction on legal practitioners is also generally observed more in the breach, because presiding officers of courts frequently do not wish to alienate the powerful lobbies of the bar.

The fundamental cause of tribal land alienation is chronic indebtedness. No law to protect the tribals can be successful unless it is complemented by measures to meet their genuine credit needs, including for consumption, and to protect them from usury.

In the last analysis, any measure for social justice can succeed only if the intended beneficiary group is aware of its provisions, convinced Tribal Policy

about the legitimacy of the protective legislation, and mobilised and organised both to use its provisions and to enforce its effective implementation. However, these conditions are mostly not fulfilled with regard to the tribal victims of land alienation in Madhya Pradesh. The studies by the TRI have noted the very poor levels of awareness of tribals of the measures contained in sections 165 (6), 170 (A) and 170 (B) of the Code. The majority of tribal people are not even convinced about the moral legitimacy of these provisions. It has been the experience of this writer that frequently, tribals refuse to apply, or to cooperate with suo moto proceedings, because they believe that to accept restoration of the land would constitute a morally intolerable breach of an agreement made in the past by their elders, even if such an agreement was with an exploitative moneylender. Even when individual tribals are convinced and seek redress, they are powerless as atomised individuals fighting the might of socio-economic and political power, with judicial instruments heavily weighted against them. Only if they combine and seek organised legal redress, are they likely to succeed. But this rarely happens.

### **Budgetary and Administrative Mechanisms**

In order to ensure that special budgetary provisions are made for tribal development, the Constitution itself provides in Article 275 that there 'shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of a state such capital and recurring sums as may be necessary to enable that state to meet the costs of such schemes of development as may be undertaken by the state with the approval of Government of India for the purpose of promoting the welfare of the Scheduled Tribes in that state or raising the level of administration of the Scheduled areas therein to that of the administration of the rest of that state'.

However, contrary to the expectations in some quarters, actual budgetary allocations in the first three Five Year Plans for tribal development were extremely niggardly. 'On an average the government spent Rs87.3 million annually on the Scheduled and Denotified Tribes<sup>18</sup> during the period of the first three Plans. The average annual spending, per head, came to as little as Rs3.50' (Mann 1980:29).

In response to the need to ensure adequate budgetary allocations to the tribal people and regions, an extremely important budgetary mechanism was introduced from the Fifth Plan. This was the instrument of the Tribal Sub-Plan (TSP), or the earmarking of separate plan outlays exclusively for the development of STs, roughly in proportion to their population in the country as a whole or the state in question for which the budget was being prepared. For the administration of the TSPs of various states, blocks or groups of blocks of high tribal concentration (more than 50 per cent) were constituted into Integrated Tribal Development Projects (ITDPs), and various wings of government were sought to be integrated in the ITDPs under the leadership of a senior government functionary.

The stated objective of the TSP strategy was to secure budgetary allocations for tribal development at least proportionate to their population, in order to 'bring them [tribal groups] at par with other sections of society and to protect them from exploitation. The TSP strategy is in operation in 18 states, namely Andhra Pradesh, Assam, Bihar, Gujarat, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Maharasthra, Manipur, Orissa, Rajasthan, Sikkim, Tamil Nadu, Tripura, Uttar Pradesh and West Bengal and two Union Territories, namely the Andaman and Nicobar Islands and Daman and Diu' (Government of India 1998–1999: 32).

The instruments of the TSP and ITDP did result in the allocation of a greater proportion of budgetary resources to tribal development. Enhanced TSP flows and expenditures are given in Figure 1. Since the Fifth Plan, these have in the context of the Government of India often exceeded the proportion of tribal people to the total population (Figure 2). Flows to TSP are officially monitored for various departments of the central and state governments. <sup>19</sup>

However, there were many limitations to this strategy. Firstly, mere enhancement of budgetary allocations does not lead automatically to enhanced welfare. The implementation of protective measures that do not involve financial outlays may be far more significant.

Moreover, in both central and state governments, the political objective of securing allocations under TSP in proportion to tribal

Figure 1

Comparative position of ST population with tribal sub-plan flow (5th, 6th, 7th and 8th plan and annual plan 1997–98)

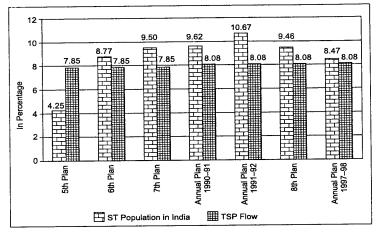
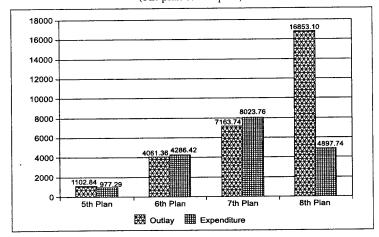


Figure 2

Tribal sub-plan flow and expenditure
(5th plan to 8th plan)



populations was rarely achieved. Even when it was achieved, it was often the result of innovative accounting mechanisms rather than genuine enhancement of outlays on programmes for tribal development. In the Fifth Plan, expenditure on major investments like industrial and large irrigation projects was treated as indivisible expenditures, and not included under the TSP. However, from the Sixth Plan onwards, many of these expenditures were shown to be for tribal welfare.

In states with high tribal concentration, the bureaucratic ploy frequently resorted to is that described as 'booking' of expenditures to TSP. The unstated purpose appears to be to inflate figures of expenditures for programmes allegedly for tribal welfare, without disturbing the actual balance in favour of other, more powerful mainstream budgetary demands. Expenditures on staff, institutions and general plan expenditures, such as a highway passing through tribal plan area, are routinely booked to TSP. Even subsidies given to private industry for setting up industrial units in tribal areas are shown as part of the TSP. This is particularly ironic in that projects which have forcibly uprooted and dispossessed local tribal populations are transformed, through such budgetary fictions, to projects which have actually been for the development of tribal people.

Similarly, the Integrated Tribal Development Plan (ITDP) strategy in most states was a non-starter. Senior functionaries were posted as Project Officers in charge of ITDPs in many states, but they were rarely delegated significant financial or administrative authority over other departments working in tribal areas.

What is needed is that budgetary resources proportional to the tribal population in the state be separated from the overall plan right at the outset. For these resources, treated as a separate pool, genuine TSPs should be prepared in response to the real needs and aspirations of the tribal populations. The TSP should have been aggregated to the ITDPs and Modified Area Development Agency Programmes (MADAPs), and plans should emerge from below, by a process of consultation. Only through decentralisation of funds and authority

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to sub-district concentrations of tribal people can it be ensured that a just share of national and state budgetary resources are channelised for programmes which meet the felt needs of STs.

### **Educational Strategies**

The largest proportion of centrally sponsored programmes for tribal development are related to the single sector of education. This same sector tends to dominate budgetary allocations even in state governments. In states like Madhya Pradesh, tribal education is administered directly by the tribal welfare department and separate from the education department on the premise that the educational needs of tribal communities are at variance from the needs of the rest of the population.

The major strategies in various tribal states have been the establishment of hostels, scholarships, freeships, mid-day meals, free uniforms, books and stationery, remedial coaching and special coaching for competitive examinations, and vocational training (most successfully and innovatively in the field of computers). Under the major schemes of central assistance, the scheme of girls' hostels which was started in the Third Plan, is a useful instrument for spreading education among ST girls, whose literacy still stood at 18.19 per cent as per the 1991 census against the general female literacy of 39.23 per cent (Government of India 1998–1999: 35). A similar scheme was introduced in 1989–1990 for construction of boys hostels. The Ashram School scheme was launched in 1990–1991 with the objective to extend educational facilities through residential schools for ST students. A new scheme for ST Girls Low Literacy pockets was introduced in 1993–1994 and implemented through NGOs.

The strategy of special tribal hostels and residential schools makes eminent sense, because tribals reside traditionally in extremely small and dispersed settlements in difficult and remote areas. Therefore, the logistics of serving each of these settlements with day schools are unmanageable. The solution has been found in locating residential tribal schools and hostels even in the deep forest interiors, although quality and basic amenities remain a problem. The amounts paid as scholarship and stipends to tribal students, have enabled resource-

strapped tribal families to invest in education, even though there is evidence that part of the money is diverted by some families for noneducational purposes.

Tribal hostels and residential schools in remote interiors are notoriously poorly managed, plagued by badly maintained buildings and delays in payments to students and purchases. Teachers, if they teach at all, are often poorly motivated and sometimes display prejudices against tribal children. The greatest failing has been in the context of education in tribal schools. The sensitive rhetoric of stated tribal policy of 'integration' and enabling tribal communities to develop according to their own genius' is entirely forgotten, as mainstream school curricula are imposed wholesale on tribal schools. The problem is not merely the medium of instruction; again, contrary to stated national policy of enabling children at the primary level to study in their mother-tongue, there are almost no tribal schools in which teaching is in tribal languages. Even more serious is the cultural bias of school curricula, which tend to be urban, upper-caste Hindu in content. Studies have also established patriarchal and communal trends. Even the dedicated Ramakrishna Mission schools in remote regions of Bastar and Arunachal Pradesh, which have been actively promoted by the Indian state, provide high-quality education but of a kind that is exclusively and unapologetically Sankritised Hindu in terms of its cultural moorings, values and idioms. The Christian missionary schools in tribal regions country-wide have been equally aimed at assimilation, although into a different cultural ethos.20

However, despite all these limitations, education is a growing and powerfully felt need of tribal communities. In the two-decade experience of this writer in tribal regions in the interiors of Madhya Pradesh, the most visible evolution in tribal aspirations even in remote tribal hinterlands and among so-called primitive tribes, has been for education. The attraction is partly for eligibility for employment, particularly in government. However, the major impetus is to acquire skills to negotiate the complex, exploitative external world. The challenge remains of meeting these aspirations without alienating tribal communities from the roots that sustain them.

### **Self-Governance by Tribal Communities**

In the winter of 1996, without fanfare and in fact largely unnoticed, the Indian Parliament passed what is without doubt the most significant legal measure for tribal people since Independence. Earlier, the 73<sup>rd</sup> and 74<sup>th</sup> constitutional amendments had inserted Part IX in the Constitution relating to panchayati raj, but parliament consciously excluded Scheduled Areas from the operation of these laws, providing that it may separately extend these laws to Scheduled Areas with suitable modifications. A committee constituted for this purpose, chaired by Dileep Singh Bhuria, MP, recommended in 1995 wide powers to the gram sabha, or assembly, of all village residents in Scheduled Areas. The 1996 Act is based substantially on these recommendations.

The underlying premise of the Panchayats (Extension to Scheduled Areas) Act, 1996 (hereafter referred to as PESA) is that tribal communities can be brought back from the brink of economic, social and cultural disaster only if they are restored effective and comprehensive control over their own destinies. Accordingly, this law seeks to create legal spaces and institutions that carry the potential to arrest, and even reverse the sombre recent history of tribal communities.

PESA is unprecedented in that it gives radical self-governance powers to the tribal community and recognises its traditional community rights over natural resources. Prior to the passage of this Act, laws passed by central and state governments were applied mechanically to tribal areas, even when these contravened traditional tribal practices and institutions.

PESA opened a new chapter in the governance of tribal regions.

The gram sabha, which is the locus of political power under the PESA, may be no more than a convenient administrative label for the relevant assembly; instead, the law focuses on settlements which the tribal people themselves perceive to be traditional and organic entities. In fact this is the first law that empowers people to redefine their own administrative boundaries. PESA provides that the tribal gram sabha, so defined, would be empowered to approve all

development plans, control all functionaries and institutions of all social sectors, as well as exert control over all minor water bodies, minor minerals and non-timber forest resources. It would also have the authority to control land alienation, impose prohibition, manage village markets and resolve internal conflicts by traditional modes.

In one stroke, the Act create a space for people's empowerment, genuine popular political participation, convergent community action, sustainable people-oriented development and auto-generated emancipation. In reality, however, since its passage the Act has mostly remained forgotten in the corridors of power and has not become part of mainstream political discourse. Many state governments have passed laws not fully in conformity with the central law. Academics, administrators, policy makers and even parliamentarians remain unaware of it. The tribal communities informed about the provisions of the law greeted it with enthusiasm but found themselves progressively handicapped by the lack of actual preparedness to negotiate development and democratisation in the manner envisaged by the law.

The real danger thus, is that the far-reaching changes introduced in the law will remain a dead letter unless they are translated into action and sustained by a process of awareness and capacity building among the tribal communities. There are a number of grave problems that must be overcome if the law is to transform tribal reality, but it is important to stress that none of these barriers to tribal self-government are insurmountable. We devote the following sections to studying these issues and exploring possible solutions.

### **Financial Resources and Capacity Building**

There is firstly the issue of genuine devolution of financial resources to tribal gram sabhas. We have already noted that the TSP strategy has led only to formal devolution to tribal areas. Impoverished tribal communities have no surplus that can be invested in development plans. Development planning by tribal gram sabhas can become a reality only if the TSP strategy is modified to ensure genuine devolution of substantial budgetary resources as united funds for tribal gram sabhas. The foundations for the groundswell of popular

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participation in people's planning by gram sabhas in Kerala were first laid by the unprecedented decision of the state government to earmark 40 per cent of the state budget for local plans.

The Kerala model also underlines the importance of building capacities and competencies. In Kerala, this was done through a large movement for citizen's education involving thousands of volunteers. For tribal communities, the challenge of disseminating the skills for people's planning is even more formidable, because the institutions, procedures and the entire idiom of these processes of governance are so profoundly alien for a people historically excluded and oppressed by these institutions and processes. The same problems would apply to provisions in the law which subordinate government functionaries like teachers and health workers to the gram sabha.

### Minimalistic Interpretation - Example of MFPs

The implementation of the law has been severely hampered by the reluctance of most state governments to make laws and rules that conform to the spirit of the law. Weak-kneed political will has usually led to bureaucratic creativity in minimalistic interpretations of the law.

Bureaucratic subversion of the letter and spirit of the law has been most visible in the interpretation of that provision of PESA by which panchayats at appropriate levels and the gram sabha have been vested with the ownership of minor forest produce (MFP). For tribal forest dwellers, the forest department has been the most visible oppression. <sup>22</sup> Enforcement of PESA is perceived as weakening the stranglehold of the forest department, and it is instructive to study the interpretation of PESA favoured by the forest department in its attempts to minimise the department's loss of control.

Firstly, the forest department states that the power of gram sabhas can extend only to forest located within the revenue boundaries of a village. This one provision, if accepted, would nullify the law because no reserved forest, and in most states, no protected forest is located within a revenue village. The spirit of the law is clearly to extend ownership to the gram sabha of MFP from forests which they traditionally access located in the vicinity of the village. In fact, in

the case of Joint Forest Management (JFM), the Madhya Pradesh government vested the village forest committees with authority to manage forest falling within a radius of five kilometres of the boundaries of the village. A similar dispensation would be eminently suitable in the case of PESA.

Secondly, MFP has been defined to exclude cane and bamboo. This is contrary to the botanical definition of MFP which is 'that part of a tree that can be sustainably harvested without damage to the survival of the tree'. More significantly, it denies access to poor tribal artisans to two types of MFP on which their livelihoods are most critically dependent. On the other hand, we have already observed how state policy has subsidised bamboo to the extent that this is supplied at one to five per cent of its market rate for private industry.

However, the greatest semantic contortions are reserved for the forest department interpretation of the concept of 'ownership' of MFP by the gram sabha. It is stated that ownership does not provide the gram sabha the right to take decisions related to stewardship, management or sustainable harvesting of MFPs. Contrary to a whole body of empirical evidence from the national and international experience of JFM and community control of forests, it is claimed that the exercise of 'ownership' of MFPs by gram sabhas in this sense, would inevitably lead to destruction of forests. Therefore, 'ownership' as provided for in PESA is reinterpreted to mean the right to net revenues from MFP, after retaining administrative expenses of the forest department.

### Mediating Tradition for Adjudication<sup>23</sup>

One of the most thorny and problematic and arguably also the most potentially radical and liberating provisions of PESA is section 4 (d), which lays down that 'every gram sabha shall be competent to safeguard and preserve... the customary mode(s) of conflict resolution'. This terse but dense formulation envisages the establishment – or restoration – of alternate institutions for resolution of the civil and criminal disputes of rural people. It further seems to require that these institutions should be based on tradition and custom, and should derive both legitimacy and sustenance from the gram sabha.

The rationale of this provision is that the formal contemporary systems for resolving conflicts – the courts, the police, jails and statutory law – stand increasingly discredited in the countryside. They are seen to be heavily weighted against the poor, ridden by corruption, delays and mystification. They have substantially lost legitimacy as reliable institutions for ensuring cheap, quick, unbiased and transparent justice for rural people, especially those belonging to disadvantaged groups.

The PESA formulation opens significant windows of opportunity for tribal peoples to construct alternate community-based structures for delivery of justice. However, before these opportunities can be realised, a host of extremely difficult questions need resolution.

A literal interpretation of the PESA formulation seems to suggest that restoration of customary modes of conflict resolution in itself would ensure more reliable justice. However, any such uncritical faith in tradition and custom as intrinsically superior vehicles for justice delivery cannot be supported empirically. Untouchability and witch-hunting are both traditions, and the latter is particularly firmly grounded in many tribal areas and notorious for its use in suppressing female assertion.

The law somewhere also presumed the survival of 'homogenous', 'egalitarian' and 'altruistic' tribal communities, but tribal societies have undergone vast changes. Cultural transformation has followed the drastic mutation of their material conditions. As we have already seen, the egalitarian internal organisation of tribal societies has also in many cases been distorted, particularly in relation to women. Alcoholism and other social symptoms of the degradation and exploitation of tribal societies have resulted in tribal women bearing nearly all the burdens of balancing the household economy. The breakdown of traditional control over consumption of alcohol has increased male irresponsibility, drained domestic resources and encouraged greater domestic violence. Ironically, women have become partners in their own oppression, as it is women who mainly manufacture illicit liquor. Although rape is still uncommon in tribal societies, domestic violence is rampant and the community has ceased to intervene, regarding this

as a 'personal matter'. Women are equally terrorised by witch hunting, because every woman is a potential witch who can be stoned to death. Women have virtually no right to property. Women are excluded from any traditional modes of conflict resolution, even when they are party to the dispute. Tribal societies have also begun to practice untouchability, and oppress weaker tribal groups.

Panchayat literally means five persons sitting together to adjudicate, but panchayats have often performed this function as a bastion of male dominance, excluding women, young people, the poor and socially disadvantaged groups. For example, the Warli tribals traditionally resolve disputes by inviting the two parties to the dispute to nominate any two persons as panches to adjudicate. The four nominated persons in turn nominate a fifth panch. This seems an excellent mechanism, except for one critical rider, that traditionally only men can be nominated as panches, even where women are party to a dispute. In the discussions this writer held in various Warli gram sabhas in the Thane district of Maharashtra, women consistently stated their preference for the formal systems of conflict resolution even when acutely conscious of the limitations of these systems, very probably in a reaction against the severe gender bias of traditional systems.

Our first problem is that whereas the need for alternate local community-based institutions for justice delivery is fully acknowledged, the extent to which these institutions must be rooted in tradition is unclear. The need to seek, unravel and understand traditional modes is also admitted; however, the yardstick of contemporary universal standards of justice and equity must also test these modes. There is need for far greater understanding, based on empirical research, about what are the principal traditional modes of justice adjudication in major tribal groups in Scheduled V areas. Are these traditional systems accessible to all sections of the community? Can they deliver quicker, cheaper and more reliable justice, when compared to the formal judicial system? Answers to these questions must be framed with particular reference to women, dalits and other disadvantaged groups within tribal communities.

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Would localised community-based institutions for justice delivery function in the best interests of the disadvantaged in village communities often riven by bitter and ancient divisions of class, caste, gender and age? If such institutions are in fact established, what safeguards should be introduced to secure the interests of the relatively powerless within the community?

Another set of problems relates to the procedure for a rural collective to adjudicate. The language of PESA requires that the gram sabha be competent to safeguard the customary mode of dispute resolution. This seems to suggest firstly that detailed procedures would be laid down by the gram sabhas, drawing from tradition, and not spelled out in detail in the law itself. Whereas this interpretation has the merit of enabling local wisdom to flourish, definite broad safeguards are required to ensure conformity with universal principles of justice and to protect weaker groups.

The PESA formulation also suggests that the gram sabha as a collective would not necessarily adjudicate disputes. It would only lay down procedures, and monitor the proceedings. However, the establishment of local committees to adjudicate is fraught with dangers. The Madhya Pradesh Gram Nyayalaya Adhiniyam, 1996 for instance, provides for the constitution of Gram Nyayalayas, by the unanimous nomination of seven members by the Janapad (Block) Panchayat. Political nominees would pack a nominated body of the kind envisaged in the Madhya Pradesh Act, and a committee of political nominees would be very likely be no more than an extension of the local power elite, but lacking the legitimacy of either tradition or of the rule of law. People disadvantaged by caste, class and gender, would be severely disabled in securing justice in such a situation.

Some of the other major issues on which the law must be unambiguous include the following:

On which type of issue should gram sabhas be empowered to adjudicate? Should their jurisdiction be voluntary or mandatory? If the two parties desire to access alternate institutions, which would prevail? What would be the procedures and powers to summon witnesses, secure justice and enforce decisions? What would be the powers, if any, of the gram sabha to award punishments?

◆ There are also other issues related to the interface between the community-based and formal systems. Would their jurisdiction be concurrent or exclusive? Which agency/agencies would be bound to implement the decisions of the gram sabha? What powers would the gram sabha enjoy for the enforcement of its decisions? What would be the appeal mechanisms?

In summary, it is true that rural communities have faced monumental difficulties in securing justice in their interface with formal institutions for dispute adjudication and justice delivery. However, great care needs to be exercised replacing the established institutions with others less tested, even when these are intended to be more reliable vehicles for speedy and impartial justice, especially for disadvantaged sections of rural society.

# Gram Sabhas and Control of Tribal Land Alienation in Scheduled V Areas<sup>24</sup>

PESA attempts to redress the consistent failure of formal state structures to deliver justice to dispossessed tribal land-owners, by requiring state governments to specifically endow panchayats at appropriate levels and gram sabhas with powers to prevent alienation of land and to take appropriate action to restore land unlawfully alienated from a tribal. (Chapter 5) However, these substantial powers are to a certain extent hampered in their reach by the fact that procedures are not clearly spelt out.

Despite this lacuna, the state legislatures of Andhra Pradesh, Gujarat, Himachal Pradesh, and Maharashtra have resolved to amend their laws regulating land transfers from STs in Scheduled Areas to appropriately empower panchayats and gram sabhas. However, detailed amendments are still awaited nearly three years after the passage of PESA. The Maharashtra government has enabled gram sabhas and panchayats only to make recommendations to the Collector in this matter (Srivastava 1999).

The Madhya Pradesh legislature has amended its Land Revenue Code, 1959 with a slightly more detailed formulation, as follows:

If a gram sabha in the Scheduled Areas finds that any person other than members of an aboriginal tribe, is in possession of any land of a *Bhumiswami* belonging to an aboriginal tribe, without any lawful authority, it shall restore the possession of such land to whom it originally belonged and if that person is dead to his legal heirs;

Provided that if the gram sabha fails to restore the possession of such land, it shall refer the matter to the Sub-Divisional Officer who shall restore the possession of such land within three months from the date of receipt of the reference (quoted in Mander and Naik 1999: 6).

The Madhya Pradesh formulation has the merit of ensuring much clearer compliance with PESA. It places direct powers with the gram sabha for restoration of land illegally alienated from a tribal landowner by a non-tribal. It also places a duty on a senior revenue authority – the SDO – to restore possession within three months if the gram sabha fails in this. However, for this provision to become operational, far more detailed instructions regarding the procedures to be followed by the gram sabha for the exercise of such quasi-judicial authority would be required. There are also, as we shall observe, other aspects of regulating tribal land-alienation from which the gram sabhas are still excluded.

As stated earlier, PESA requires state governments to specifically empower panchayats at appropriate levels and gram sabhas in Scheduled Areas with powers to prevent alienation of land and to take appropriate action in this regard. These powers are clearly intended to extend to

- + Regulate the transfer of land from STs to non-tribals
- ◆ Detect instances of land unlawfully alienated from STs
- Restore illegally alienated land to the original tribal landowners.

The regulation of land transfers from STs to non-tribals involves firstly decisions regarding whether any particular sale of agricultural land

from STs to non-tribals may be permitted at all. Many state governments have now imposed a blanket ban on such transfers in Scheduled Areas. However, in states where such transfers are permitted with the consent of superior revenue authorities (Collector or SDO), the concurrence of the gram sabhas should be made mandatory before the revenue authority is empowered to extend permission. Such regulation also implies ensuring that a non-exploitative price is paid to the tribal with an actual transfer of the amount (and not, for instance, adjustment against some old loan from a moneylender). Here again, the gram sabha must concur that the price being offered is adequate and just, and payment by cheque in the joint names of male and female heads of the family wherever applicable – be made in the presence of the gram sabhas.

Regulation by the gram sabha also implies interventions to provide relief in the event that permission for sale by a Scheduled Tribe is refused. The gram sabha and gram panchayat may be encouraged and assisted to establish alternate community-based modes of securing ready credit, like a community village fund or *gram kosh*, for times of distress and for productive purposes. In addition, the gram panchayat may assist the tribal to secure credit from a co-operative or nationalised bank.

We move now to the second type of the power that we suggested that panchayats and gram sabhas need to be equipped with in this matter viz., detection of instances of land unlawfully alienated from STs. The gram sabha cannot be expected to detect this on an ongoing basis unless land records are placed directly under their control. Exploitation in matters of land title in rural India is sustained, at least in part, by the notorious monopoly of *patwaris* or village accountants over land records. They have exercised uninterrupted tyranny over rural India for centuries because typically they function unencumbered by any kind of transparency or accountability requirements. Transfer of control over land records to the gram sabha, or at least to the village panchayat, as has been recently accomplished in Madhya Pradesh, would enable a breach in this long tradition of official tyranny. For instance, a provision that the record

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of rights – which lists each plot of land and the recorded owner – be read out and approved by the gram sabha, would enable detection of benami land or that held by force illegally by non-tribals. In addition, the requirement that all court rulings for the restoration of land illegally expropriated from tribals by non-tribals, would enable gram sabhas to detect instances of non-compliance with court orders, which remain legion in most states.

The third kind of legal empowerment envisaged for tribal gram sabhas is to restore illegally alienated land to tribal landowners. One procedure may be as follows: Both sides are invited to adduce evidence, verbal or documentary, to establish their claims before the gram sabha which would include both tribal and non-tribal residents of the settlement. Any other member of the gram sabha with knowledge of the case would also be allowed to give evidence. It would be mandatory for the *patwari* to give testimony. There would be full rights of cross-examination, but no party is allowed to be represented by a legal practitioner.

In the end, the gram sabha would take a decision either unanimously or by majority opinion, established by show of hands. The relevant laws would have to be amended to lay down explicitly that the decision of the gram sabha in this regard would have the same weight in law and the same binding quality as the decision of the lowest revenue court. In the event of an appeal by the non-tribal, it would be mandatory for the court to ensure compliance with the decisions of the gram sabha to restore land to the tribal before considering the appeal. Also, if the gram sabha's directions to restore land to the tribal are not complied with, the gram sabhas or the tribal concerned may inform the court, and it would be mandatory for the court to ensure the restoration of the land to the tribal within three months.

#### Gram Sabha and Moneylending

Section 4(m) (v) of the PESA lays down that the '... State Legislature shall ensure that the panchayats at the appropriate level and the gram sabha are endowed specifically with...the power to exercise control over moneylending to the Scheduled Tribes'.

This is a provision of enormous potential for the protection of tribals from grave and continued pauperisation. Tribal people in all regions in India remain extremely vulnerable to rampant exploitation by moneylenders, and laws aimed at preventing usury have had an extremely limited impact in extending genuine protection to them. PESA seeks to correct this by placing powers directly with tribal gram sabhas to regulate moneylending.

However, a survey of state laws reveals that most State governments have not so far adequately amended existing laws, nor have they passed fresh laws or administrative instructions in order to bring these in conformity with PESA, 1995. The amended Panchayats Acts of Andhra Pradesh, Himachal Pradesh and Orissa make provisions for control of moneylending by gram panchayats or gram sabhas 'as may be prescribed'. However, the state governments have not issued detailed guidelines or amended the relevant laws accordingly. The Madhya Pradesh government is said to be considering an amendment to its laws related to moneylending but this has not yet been passed by the state legislature. The governments of Gujarat and Maharashtra have amended the Bombay Moneylenders Act, 1946 to make consultations with the gram sabha, before the issue of a license to a moneylender, mandatory (Srivastava 1999). However this cannot be considered an adequate compliance with either the letter or spirit of the law, because it does not empower gram sabhas to intervene in any way to provide relief in the event of a breach of the conditions of license. A minimal procedure, as a first step, could be to lay down that all moneylenders should have a licence from the gram sabha, that they should keep written accounts (ratified by the borrowers), and that debts not supported by written evidence will be considered null and void. But over time, more effective procedure need to be developed, which may be as follows:

In any Schedule V area, any person or institution who proposes to engage in moneylending with any resident of a village, must apply first for permission to the senior revenue court of the SDO (Civil) in whose jurisdiction the village is located. The application must provide full details of the terms under which the credit is proposed to be

offered (including rate of interest, mortgage if any, enforcement mechanisms and outcomes of default, the purposes for which credit will be offered and full details of the proposed moneylender).

The SDO will confirm firstly that the proposed terms of credit are in conformity with the relevant laws at that time. Those applications that are in conformity will be forwarded for consideration to the next meeting of the relevant gram sabha. The gram sabha will consider the application, especially with regard to the following:

- ◆ Do the village residents require credit of the kind being offered?
- Are the terms of credit being offered considered reasonable by the gram sabha?
- Does the track record of the moneylender suggest that he/she is fit to be entrusted with the responsibility for moneylending?

Only if the gram sabha, after these deliberations, recommends the grant of license, the moneylender may be granted licence by the village panchayat.

In case there is allegation of breach of any condition of licence by the moneylender, the person affected or any other resident of the village may file a complaint to this effect to the village panchayat. It would be mandatory for the secretary of the village panchayat to ensure that the complaint is included for consideration in the next gram sabha meeting. It would be mandatory also for the moneylender to be given notice to appear with all concerned records in the next meeting of the gram sabha. In case the moneylender refuses to appear or fails to produce the relevant documents, the gram sabha may inform the SDO who after confirming these facts, would be authorised by law to issue a non-bailable warrant against the moneylender, to ensure appearance.

The gram sabha would elect a four-member committee, including one elected representative who is a ST, one village-level government official and two other village residents of whom at least one must be a woman. This committee would then proceed to examine the moneylender, the recipient of credit, the complainant, and any witnesses who may be produced. They would also examine the records. All these

examinations and investigations will be completed in the presence of the gram sabha. The committee will then pass a summary verdict. The verdict will include decisions whether there was indeed a breach of licence by the moneylender, the relief including recovery of cash or mortgaged property, and suspension or cancellation of license. The gram sabha must also lay down a time limit in which its decision must be complied with. The gram sabha will also conclude whether the moneylender has also been guilty *prima facie* of any offence under the IPC or Atrocities Act.

In the event of any failure to comply with the decision of the gram sabha in the prescribed period, the village panchayat would be bound to inform the SDO of this breach in writing. The SDO would be bound by law to ensure compliance within three months including recovery and restoration of property wherever applicable. Apart from this, if the gram sabha had concluded that prima facie there was an offence under the IPC, the village panchayat would be bound to file a FIR with the police station of appropriate jurisdiction.

A similar procedure would apply in the event of any allegation of moneylending being transacted with any member of the gram sabha by a person or institution without licence.

However, as in the case of moneylending, nowhere have state governments made any such move towards achieving a powerful interpretation of PESA in accordance with the spirit of the law, and with a genuine will to create legal spaces to enable tribal communities to combat long years of exploitation by the moneylender.

In conclusion, darkness continues to prevail in the arena of tribal policy in India. Protective laws are rarely implemented, budgetary measures like the TSP strategy have failed to achieve genuine financial devolution, and educational strategies have been assimilative and destructive of the moorings of tribal culture. Light at the end of the tunnel can be seen only in a powerful and radical recent law that provides for self-governance by tribal communities. However, so far, the state has forgotten or subverted the interpretation of its own laws. The perils of the tribal identity and survival remain as real as ever.

### Endnotes

- 1. Also called the Schedule V tribes.
- 2. And indeed, such confusion was widespread during the early years of British rule when all of India's bewildering variety of communities were labeled as tribes, even when early ethnographers did note that some were identifiably 'wild', 'primitive' and 'aboriginal'. It was not until the twentieth century that a census administrator named Herbert Risley set the tone for much of the subsequent discussion by distinguishing between 'caste' and 'tribe'. For an account of the historical context in which this understanding evolved, see Anand (1995) who argues that colonial and contemporary definitions of tribal identity are closely tied to the political project of colonial (and post-colonial) discourse.
- This is roughly what Savyasaachi (1998:27) describes as the tribals' 'forest universe'. Savyasaachi goes on to stress the importance of the unique tribal work culture as opposed to the industrial work ethic as a source of identity for tribal communities.
- For a detailed transcription of and commentary on the Constituent Assembly debates on the Fifth and Sixth Schedules, see Savyasaachi (1998).
- 5. As Shah et al imply above, these 'refuge zones' often represented lands otherwise less suited to settled agriculture, the mainstay of non-tribal society. However, as Anand (1993:5) concludes, before the advent of colonialism 'the tribals still lived in relative isolation and with a fair degree of control over their habitat' 'although often within the context of a subordinate political relationship with a dominant non-tribal power' following from 'tension and conflict and an unequal fight'.
- 6. The evolution of this policy is described in Savyasaachi (1998) and Anand (1995).
- 7. Savyasaachi (1998) goes a step further to argue that the special administrative measures established putatively for protective purposes in fact facilitated commercial forest management. One particularly striking example of this is provided by the restriction on shifting cultivation, which was often the lifeblood of tribal economy and culture. (The interested reader is referred to Elwin (1939) for an account of how this ban on bewar affected the life of the Baiga tribe).
- An interesting, if unconventional reading of the relationship between the missionaries and the tribes they ministered is provided by Anand (1995, 1996).
- 9. In terms of occupation, there remain today only few tribal communities like the Birhors of Madhya Pradesh, Chenchu, Yenadi and Yeribula of Madhya Pradesh and the Onge, Jarawa and Sentinelese of the Andaman and Nicobar Islands, which are entirely dependent on forestry and food-gathering, but even they barter these products for other goods in village markets. Most forest-dwelling tribals continue to depend on the collection of NTFPs as a major supplementary source of livelihood. An estimated million tribal cultivators engage in slash and burn shifting cultivation, covering 26.7 million acres of land. This system is known variously as 'jhum' in the North-eastern states, 'poor' in Andhra Pradesh, 'dahiya'or 'bewar' in Madhya Pradesh and 'komar' 'bringu' or 'gudia' in Orissa. Today settled but usually low productivity dryland subsistence

- agriculture is the predominant source of livelihood for the large majority of tribal people. Cottage industries are the mainstay of small scattered tribes, such as bamboo and cane artisans.
- 10. For a detailed exposition of the adverse impact of forest policy on forest dwellers, see Saxena (1996).
- 11. To an extent, this phenomenon of tribal land alienation is universal in tribal regions worldwide because of the powerful and predatory assault by wider 'civilisation' on their traditional social organisation.
- 12. For an in-depth analysis of the impact of big dams of vulnerable tribal populations, see Mander (1999) (mimeo).
- Anand (1993) is a comprehensive discussion of these processes of vertical integration along class lines and emergence of a tribal elite.
- 14. The word Naxalite derives from Naxalbari, a nondescript small town in West Bengal, which gained fame for being the first outpost of an extreme left movement aiming at armed insurrection to overthrow the state. An elected Marxist government, bitterly opposed to the Naxalite movement, has been in power in West Bengal for around two decades, and the Naxalite movement is now almost moribund in the state of its origins. However, it remains a powerful challenge to state authority in many tribal pockets of Andhra Pradesh, Madhya Pradesh, Maharashtra, Bihar and Orissa.
- 15. In the state of Andhra Pradesh where this cycle of state and Naxalite violence is possibly most entrenched today, a group of respected 'concerned citizens' have attempted to engage both the state and the Naxalites in a dialogue to end this violence. The success of the group has been to engage the Naxalites in the democratic debate, but violence from both sides continues unabated., See the report of the Committee of Concerned Citizens (1998).
- 16. Moneylending may be defined as credit transactions undertaken with or without interest, with or without mortgage of moveable or immoveable property, by an individual or institution not registered by the RBI. Such an individual or institution is the moneylender.
- 17. For details on the protective measures instituted and implemented by the government, refer to Mander (Mimeo).
- 18. Denotified Tribes are tribal groups that were designated as criminal tribes during British rule. They suffered extensively from repression, and continue to remain vulnerable in Independent India, because they have not been freed from the stigma of their past.
- For a more detailed description of various schemes for tribal assistance as also the TSP, see Planning Commission (2000).
- 20. The Gandhian Thakkar Bapa, often on the opposite side of the fence from Verrier Elwin with his 'integrationist' approach to the tribal policy dilemma, was one of the first to advocate modern education for tribals 'to develop a leadership for the tribals in order that they may participate in the political life of the country' (Anand 1993:12). See Anand (1993) for a wide-ranging study of the role of education in creating such a tribal elite and promoting intra-community stratification in tribal groups.

- 21. For a more detailed discussion of the Bhuria Committee report as well as a critical reading of PESA, see Savyasaachi (1998), who argues that the PESA does not go far enough in advancing genuine self-rule for tribal communities.
- 22. One piece of anecdotal evidence, recounted by Verrier Elwin, is particularly revealing. When queried about his idea of paradise, a tribal described it as miles and miles of forest, but without a forest guard!
- The remainder of this sub-section is derived substantially from Mander and Naik (1999).
- 24. For fuller details, see Mander and Naik (1998)

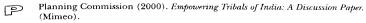
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Part Three

Chapter 4

Unconscionable Deprivation and Faltering Interventions

# RURAL POVERTY AND THE ROLE OF THE STATE

#### Introduction

Unconscionable levels of poverty stubbornly persist in India, despite the fact that the Indian state implements some of the largest and most ambitious public works and micro-credit programmes designed to combat rural poverty. Even after five decades of planned development, India remains home to the largest population of poor people in the world.

It is estimated that one-third of the world's poor people reside in India, and that there are more poor people in India than even in Sub-Saharan Africa. Estimates vary based on different poverty lines. Official estimates of the Government of India are that every third Indian is poor, and according to the estimates of the internationally recognised poverty line, which is a dollar a day, one of every two persons in India is poor. National Sample Survey Organisation (NSSO) data, assuming a calorie adequacy of 2,400 calories a day, indicates that two out of three are malnourished or under-nourished (Dev and Ranade 1999).

This chapter sets out to examine closely the objectives, strategies and impacts of the major programmes undertaken by the Government of India aimed at overcoming poverty, in order to assess in some depth their strengths and weaknesses. It seeks to argue that poverty is a complex and multi-faceted condition that not only requires a much more vigorous thrust, but also needs to be mainstreamed into the entire gamut of state interventions, especially in sustainable

agriculture and the social sectors. It holds that the micro-credit programmes as they are presently designed are fundamentally flawed and need to be curtailed and refashioned. On the other hand, rural public works programmes with a more effective focus on creating or augmenting livelihoods of the poor people need to be expanded and to include a legally enforceable guarantee component.

## Context of State Intervention to Combat Poverty in India

Poverty, even narrowly defined in terms of low income or consumption levels, has not always been a priority issue for policy makers in India. In the years after Independence, India opted for a centralised, planned economic growth model, with the public sector at the commanding heights. It was based on the belief that if the economy is able to grow rapidly, that is, production is organised more efficiently and on a larger and more intensive scale, then an effective attack on poverty would be an automatic concomitant. Further, since India resides primarily in its villages, a central focus for these development strategies was the development of agriculture.

Development of agriculture implied bringing more land under crops and raising the productivity of existing cropland, so as to raise not only agricultural incomes, but also rural employment. A series of famines and alarming food shortages in the mid 1960s spurred emphasis on intensive agricultural production through Green Revolution strategies.

As Rath (1986) has pointed out, the rate of agricultural development as measured in terms of increase in agricultural production and aggregate incomes generated in the rural sector between 1950 and 1970, was anywhere between two to three per cent annual rate of growth. This was eight to ten times higher than during the last 100 years of British rule, and not less than the rates achieved in China.

However, this massive increase in agricultural output, which became even more dramatic after the mid 1960s, occurred mainly in four or five states. Only 55–60 districts out of the 365 districts in the country accounted for almost 70 per cent of the increase in output, and these districts were far better endowed and had started off with far higher

average incomes than other districts (Subbarao 1986). Thus, the Green Revolution positively influenced agricultural production and incomes but only in some areas and for some groups of farmers.

The early 1970s witnessed an unprecedented rise in agrarian tensions in several parts of the country. Scholars measuring poverty found that despite significant industrial and agricultural growth, there was no substantive impact on the proportion of the poor in the total population. This led to *some* debunking of the 'trickle-down theory', although it continues to have its influential adherents even today.<sup>2</sup> At the same time, an influential body of opinion among policymakers came to support a direct attack on poverty.

Such programmes, aimed not at the general population but at identified vulnerable segments, are called targeted programmes. In a situation where public resources are scarce and vulnerable populations are large, the attractions of targeted programmes are obvious. Targeting may be geographical, as in the area development schemes of the Government of India, which are focused on areas that are either ecologically degraded (desert or drought-prone) or socially vulnerable (with a dominance of tribal population). However, this chapter focuses on anti-poverty programmes (APPs) targeted more clearly on individual families disadvantaged along income or consumption parameters.

In the design of these targeted APPs for the rural poor, a substantial overlap between rural poverty and underemployment or unemployment was perceived. It was therefore felt that rural development strategies for poverty alleviation must concentrate centrally on generating employment opportunities for all poor, rural households.

Against this background, a battery of ambitious rural development APPs, launched in the late 1970s, dominate public policy for addressing rural poverty till date. The targeted rural development programmes with a clear anti-poverty thrust fall broadly into two categories.

◆ Self-employment programmes (SEPs) and

Wage employment or rural public works programmes (RPWPs).
 We shall consider each in some depth in the subsequent section.

The APPs have two main objectives: 'First, to guarantee [that] the poorest [attain] a certain minimum standard of living; and second, to relax certain basic constraints (such as poor infrastructure, limited or no access to credit etc.) facing the poor in the rural areas' (Dastidar 1999: 3).

### **Self-employment Programmes**

During the last two decades, a number of rural development programmes initiated by the Government of India have consciously focused on channelling credit, grants or training to enhance the productive assets and skills of individual, and groups of households. These SEPs cover a wide range:

### + The Integrated Rural Development Programmes (IRDP)

The IRDP has been the largest, and most widely known SEP for poverty alleviation. Its main objective was to enable rural families identified as poor to cross the poverty line by providing productive assets and inputs in the primary, secondary or tertiary sector through financial assistance by way of government subsidy and medium or long-term credit from financial institutions.

The major theoretical premise (usually implied but unstated) underlying the IRDP was that the principal barrier to the large-scale generation of self-employment opportunities among the rural poor is the absence of assets, resulting from a lack of access to credit. A subsidiary bottleneck was believed to be the absence of requisite skills.

The background against which the programme was formulated was the relative failure of land reforms to generate adequate surplus land for redistribution to all, or even a major section of the rural assetless poor, and the perceived absence of political and administrative will for such thoroughgoing structural reforms in the foreseeable future. In such a situation, policy makers examined the question of how to assist the assetless and unskilled rural poor in a sustainable way.

For those with even a little land, the approach posited was to provide additional resources like bullocks, wells or pumps to augment the productivity of the land. A second approach to give moveable assets not directly related to land, such as livestock or assistance to establish petty business or cottage industries. A third was to provide skills training, such as masonry, carpentry, etc., combined with asset assistance to ensure productive self-employment in the secondary or tertiary sectors.

Since the principal bottleneck to the self-employment of the assetless rural poor was presumed to be absence of credit, it was believed that asset transfer to the poor mainly requires creating effective avenues of access to institutional credit. In order to reduce high repayment burdens, a part of the capital was given as outright subsidy or grant, and the remainder as loan at low interest rates. Accordingly, the main features of the IRDP are:

- ▼ A family with an annual income of Rs11,000 or less with reference to the price level of 1991–1992 is considered to be below the poverty line (BPL).
- ▼ 50 per cent of the assisted families should belong to SCs and STs.
- ▼ 40 per cent of those assisted should be women.
- ▼ Three per cent of the assisted families were to be from amongst the physically handicapped.
- ▼ The subsidy was to be 25 per cent of the total loan amount for small farmers; 33.3 per cent for marginalised farmers, agricultural labourers and rural artisans; and 50 per cent for SCs and STs and the physically handicapped.
- ▼ For several years the subsidy was released at the time of sanction of the loan, which led to a great deal of corruption. To remedy this, a back-end system of subsidy was introduced recently under which the subsidy amount would be kept in a fixed deposit account with banks, to be adjusted against the last instalment of the loan. The back-ending of subsidy reduces but does not eliminate the scope for corruption, because an

enterprising middleman can still borrow, repay immediately and pocket the subsidy.

- ▼ The plan was to be prepared at the gram panchayat/block level keeping in view the family's preference for income generation activities, skills and local resources.
- ▼ Programme implementation was through District Rural Development Agency (DRDA)/Zilla Parishad (ZP).

### + Training of Rural Youth for Self Employment (TRYSEM)

The Training of Rural Youth for Self Employment (TRYSEM) has been a supporting component of the IRDP, based on the premise referred to earlier viz., that along with absence of assets, another barrier to self-employment for the rural poor is lack of requisite skills.

TRYSEM aims at facilitating the diversification of IRDP activities away from the primary sector to the secondary and tertiary sectors, through the acquisition or upgradation of skills. Under the programme, training was imparted both through formal training institutions including industrial and servicing units, commercial and business establishments, etc., and non-institutionalised modes like apprenticeship under master craftsmen. The duration of training was flexible, up to a maximum of six months in normal circumstances. Trainees receive a stipend during training. Further, the project also included an honorarium which was paid to training institutions/master craftsmen.

→ Development of Women and Children in Rural Areas (DWCRA) An innovative convergence of the IRDP, TRYSEM and Jawahar Rozgar Yojna (JRY) (see further) programmes, with a focus on women's groups, was sought to be achieved by DWCRA. It was initially launched with UNICEF's cooperation in 1982 as a pilot programme in 50 selected districts, to strengthen women's share of poverty alleviation programmes. Since then, it was expanded in a phased manner and now covers all 365 districts of the country. The objective of the programme is to raise the income levels of women of poor households so as to enable their organised

participation in social development towards economic self-reliance. The primary thrust is the formation of groups of 10–15 women from poor households at the village level for delivery of services like credit and skill training, cash and infrastructural support for self-employment. Through the strategy of group formation, the aim is to improve women's access to basic services of health, education, childcare, nutrition, water and sanitation.

Groups of poor women are assisted through a package including subsidies (under IRDP), training for skill upgradation (under TRYSEM), group revolving fund (R 25,000), group work centres (under JRY) and special extension staff.

Each group is given a one-time grant of Rs25,000 as revolving fund for infrastructure, purchase of raw materials, marketing, childcare, etc., contributed in a 50:50 ratio by the Government of India and the state government.

In an attempt at rationalising the self-employment programmes, the Finance Minister of India announced in his 1999 budget speech in parliament, that self-employment programmes such as IRDP, DWCRA, TRYSEM – as well as Million Wells Scheme (MWS) – would be merged into one self-employment programme, to be known as the Swarn Jayanti Gram Swarozgar Yojna (SJGSY).

### Wage-Employment Programmes

In financial terms, the most significant rural anti-poverty strategy of the Government of India is the wage-employment rural public works programme (RPWPs).

The theoretical basis of these programmes is the belief that rural poverty is inextricably linked with low rural productivity and employment and under-employment. While the normal process of growth itself has to generate increased productive employment opportunities, there is continued need for special employment programmes and the creation of sustained employment opportunities for securing a certain minimum level of employment and income for the rural poor.

Indeed, rural public works programmes (RPWPs) are probably the oldest major social security and anti-poverty programmes in India.

'Relief works' have been resorted to as a response to large-scale destitution caused by famines or floods for centuries. They continue as the principal state response during drought even today, as well as for relief from conditions of chronic poverty.

Hirway and Hirway (1994) identify potential direct and indirect benefits of RPWPs for the poor. If the assumption that the lack of remunerative employment is the single most important determinant of poverty incidence is well-founded, the RPWPs can be used as an instrument of poverty alleviation by providing long-term employment. Moreover, part of the wages may be provided in kind, in the form of foodgrains, thus ensuring a minimum level of nutrition. The assets created by the RPWPs can also contribute directly towards poverty alleviation. The RPWPs can be used to strengthen the productive asset base of the poor in several ways, by providing 'individual assets to the poor, such as irrigation wells and promoting land development on small and marginal farms, and by developing common property resources' (Hirway and Hirway 1994: 23).

The anti-poverty wage-employment programmes for providing supplementary wage employment to the rural poor on public works evolved from the pilot Rural Manpower Programme of 1960–61, the Crash Scheme for Rural Employment of 1971, and a Pilot Intensive Rural Employment Programme of 1972. These were all in the nature of experimental pilot programmes in selected blocks. The first major programme on a national scale was the Food for Work Programme of April, 1977, which was designed to use the national stock of surplus foodgrains resulting from the successes of the Green Revolution for generating gainful employment and durable rural community assets.

The success of the programme and the general consciousness of the need to target developmental efforts at the rural poor resulted in the launching of the National Rural Employment Programme (NREP) in 1980. This programme, implemented like the IRDP through the DRDAs, provided mainly for local rural public works implemented through village panchayats and works departments. An important feature of the programme was that workers were paid statutory minimum wages partly in the form of foodgrains. This was

supplemented in 1983 by a Rural Landless Employment Guarantee Programme (RLEGP), with the stated aim of providing at least 100 days of employment to each landless family every year, but in practice resources of the magnitude required were rarely made available to enable serious fulfilment of this objective.

These programmes were merged into one single greatly expanded wage-employment programme, the Jawahar Rozgar Yojana (JRY) in 1989. Whereas the earlier schemes gave substantial discretion to DRDAs to select schemes and allocate funds, official reports found that as many as 53 per cent of the villages had received no benefit under the wageemployment programmes since their inception. There was also found to be inadequate local participation and excessive bureaucratisation in the implementation of the programmes. In order to remedy these shortcomings, the scheme is now restructured, with allocations being made to all individual panchayats, on the basis of fixed nondiscretionary criteria founded on population and indices of poverty. Within each district, the funds were now distributed among the district level panchayats, intermediate level panchayats and gram panchayats in the ratio of 15:15:70, to the exclusion of bureaucratic and technocratic line departments. This was the other major departure in the design of the APPs, namely the first time breach of bureaucratic control over APPs. The panchayats were now accorded substantial discretion to both select and implement the works.

The Employment Assurance Scheme (EAS) was introduced on October 2, 1993 (the birth anniversary of Mahatma Gandhi), in the rural areas of 1,778 blocks of 261 districts, located in drought-prone, desert, tribal and hill areas. It has been gradually extended to all the rural blocks of the country. Its stated aim is to 'assure' wage-employment for 100 days to each BPL rural family in these blocks in the lean agricultural season. The term 'assure' is carefully used instead of 'guarantee', because the assurance has no legal binding, and in fact, has rarely been met.

Whereas for JRY, the district panchayats, intermediate level panchayats and village panchayats were competent to accord approval and to implement the project works within their share of funds, bureaucratic control has been retained for the EAS. In this scheme, the implementing agencies were the Block Development Officers (BDOs), district officers and various line departments, along with block panchayats, gram panchayats and NGOs, although discretion in the selection of implementing agencies remains with the district bureaucracy.

In his budget speech of 1999, the Union Finance Minister an nounced that the JRY would be restructured and streamlined and would henceforth be known as the Jawahar Gram Samridhi Yojana (JGSY). The government has decided to shift the emphasis in JGSY from wage-employment to the creation of durable assets at the village level. Therefore, the government has relaxed the requirement of wage-material ratio of 60:40, which was mandatory for JRY. In other words, it is now possible to spend more on the purchase of materials and less on labour employment, to enable the building up of demand-driven rural infrastructure. The other major change is that whereas JRY was implemented by all three tiers of Panchayati Raj Institutions (PRIs), JGSY will be implemented only at the village level by village panchayats, to create village infrastructure. Accordingly, DRDA/Zilla Parishad are now required to release the funds directly to the village panchayats.

The EAS has been retained as the only wage-employment programme to be implemented at district and block levels throughout the country. About 70 per cent of the funds flowing to the districts would be allocated to the blocks and 30 per cent would be reserved at the district level, to be utilised in areas of distress, wherever there is the demand for work. The selection of works would be decided by Zilla Parishads after due consultations with the Members of Parliament of that area.

### Impact of APPs

Empirical data confirms that there was a sharper decline in rural poverty during the 1980s as compared to earlier decades of planned development. However, after the Structural Adjustment Programme (SAP) of 1991, poverty levels rose for two years, reversing a general

downward trend. Since then, rural poverty levels have again begun to decline, but at a slower rate as compared to the 1980s.

The data suggests that together with stable agricultural growth, APPs did to a degree impact poverty, but their beneficial effects have been substantially offset by the anti-poor impacts of the SAP. However, these conclusions need to be qualified further by the narrow definition of poverty referred to earlier, as well as difficulties in measuring poverty even according to this restricted definition.

In this book, we will not go into the debate regarding the measurement of poverty.<sup>3</sup> It may be sufficient to note that poverty was defined by the Planning Commission in 1962 in terms of the expenditure needed to obtain 2,400 calories per capita per day in rural areas and 2,250 calories per day in urban areas, plus the extra amount needed to meet other basic requirements – the latter reckoned at 20 per cent of the expenditure on food. This defined the threshold, or the poverty line, for the purpose of identification of poor households. A Task Force in 1979 pegged the calorie requirements in urban areas lower at 2,100 calories per capita per day.

We have already noted that if the internationally accepted norm of one dollar per capita per day as poverty line is accepted, the proportion of the poor in 1993 was 52 per cent. The proportion of persons denied access to adequate and assured nutrition, basic health facilities, shelter and social dignity is even higher.

Whereas it is generally acknowledged that the proportion of the poor in the overall population has declined, the absolute numbers of the poor in India have remained almost unchanged, at around 320 million since 1973–1974. A matter of even more grave concern is the slowdown in the rate of decline of poverty. 'Between 1977–1978 and 1987–1988, poverty fell by 2.26 per cent. As against that, it fell by only 1.54 per cent between 1987–1988 and 1993–1994' (Dastidar 1999).

The picture that emerges from this statistical maze is that the Indian state has achieved some success in combating rural poverty, at least in the limited sense of low incomes and consumption, but far more needs to be done if poverty is to be overcome in the near future.

We will look now more closely at the evidence regarding the performance specifically of APPs in combating poverty. The official macro-figures are impressive. It is officially claimed that the IRDP since its inception has reached nearly 60 million poor borrower families. Financial outlays on only the subsidy components of the scheme rose to 6,110 million rupees in 1997–1998. The physical targets and achievements claimed during the period 1991–1992 to 1996–1997 are summarised in Table 9. Per capita assistance in terms of credit and subsidy in 1991–1992 is summarised in Table 10.

Table 9

IRDP: Physical Targets and Achievements

	Families Ass	isted (in lakhs)	Percent	age of
Year	Target Achievement	Achievement to	Achievement to target	SC and ST families assisted
1991-1992	22.52	25.37	112.66	51.10
1992-1993	19.75	20.69	110.33	51.42
1993–1994	25.70	25.38	97.13	50.00
1994–1995	21.15	22.14	104.69	49.77
1995-1996	20.45	20.89	102.15	48.52
1996-1997	7.79	7.91	78.75	45.14

Note: Figures for 1996–1997 are available only upto November 1996 Source: NIRD 1998: 169.

Table 10

IRDP: Physical Targets and Achievements

		Pe	r family assistance (	Rs)
Sl. No.	Sector	Per capita subsidy	Per capita credit	Per capita investment
1.	General	2793	4106	6900
2.	Primary	2528	4418	6946
3.	Secondary	2293	3965	6258
4.	Tertiary	2301	4129	6430
5.	Old families	1790	3172	4920

6.	New families	2613	4528	7141
7.	Small farmers	4794	5110	7904
8.	Marginal farmers	2667	4726	7394
9.	Agricultural labourers	2405	4276	6681
10.	Rural artisans	2484	4389	6873
11.	SC	2970	3923	6894
12.	ST	2870	3172	6042
13.	Women	2394	3982	6376

Note: General figures relate to 1990-1991.

Source: NIRD 1998.

The expenditure incurred and employment officially claimed to have been generated under RPWPs between 1980–1998 is even more massive (see Table 11).

Table 11

Rural Public Works Programmes in India: Expenditure Incurred and
Employment Generated

Period	Expenditure per annum (Rs Million) (rounded)	(1) as per cent of central govt. budget expenditure	(1) at 1985– 1986 prices	Employment (million person days/year)
	(1)	(2)	(3)	(4)
1980-1985	4440			410
1985-1986	9850		9850	600
1986-1987	13540		12920	700
1987-1988	14420	2.11	12520	680
1988-1989	15710	1.98	12120	700
1989-1990	19770	2.13	14470	760
1991-1992	18250	1.64	10400	900
1992-1993	25460	2.08	12920	800
1993-1994	39060	2.75	19140	1060

1994–1995	46750	2.91	21200	1220
1995–1996	54740	3.07	21690	1230
1996–1997	50770	2.51	18750	NA
1997–1998	56860	2.45	NA	NA

Note: 1. Figures for 1980-1989 are total of NREP and RLEGP.

- Figures for 1989–1998 are total of JRY, IAY, MWS and EAS (from 1/1/96.IAY and MWS are separate schemes; EAS starts 1994–1995).
- 3. Figures for 1997-1998 are approved outlays.
- Figures in column (3) are figures in column (1) deflated by the Consumer Price Index series for Agricultural Workers (Base 1960=100).

Source: Hirway and Terhal (1994): Ministry of Finance (1997); Ministry of Rural Areas and Employment (1996 and 1997); EPW Research Foundation (1997).

Independent evaluation studies of IRDP confirm, on the positive side, that it has provided unprecedented access to the rural poor to institutional credit, and that IRDP loans remain virtually the only form of formal credit locally available to the poor (Dastidar 1999). However, the evidence regarding the benefits of the programme in terms of success in extending sustained assistance to poor families to break out of the poverty cycle is much more mixed.

Official evaluation studies have generally been more optimistic about the impact of SEPs in combating poverty. The more convincing independent evidence, however, appears to be that these programmes have been more successful in assisting families just below the poverty line to rise above it, but this also mainly in infrastructurally and agriculturally well-endowed regions. There have been some noteworthy successes, such as in 'Andhra Pradesh where the DWCRA is relatively successful, [which] suggests that with continuous training and the right kind of support programmes, poor women's groups can be evolved into teams of successful entrepreneurs. Government of Andhra Pradesh (1998) cites a number of instances of successful women entrepreneurs who have benefited tremendously from the DWCRA and also the SITRA schemes' (Dastidar 1999: 18–19).

However, in general, as Quibria (1994) points out, studies of IRDP paint a generally dismal picture. Dreze (1990) contrasts the findings of intensive micro-studies with large-scale household surveys, and

finds that the latter type is much more encouraging in its results. He concludes that:

- ◆ Even if IRDP were flawlessly implemented, we could not expect this programme to bring about the kind of radical reduction of rural poverty in India that is often claimed or expected to produce
- ◆ In large parts of India (with some important exceptions such as West Bengal) the selection of IRDP beneficiaries is at best, indiscriminate and at worst, biased against the poor
- ★ We have no solid evidence on the actual effects that IRDP has on the living standards of the participating households (quoted in Ouibria 1994: 337–338).

Even in terms of credit assistance for the creation and retention of productive assets, the evidence is not encouraging. World Bank (1998) in a recent review of the literature found that 'few loan recipients actually acquired (and even less retained) productive assets. A high percentage of the loans underwrote consumption to tide over emergencies like marriages, deaths and sickness, and other unproductive expenditure. Overall, access to IRDP loans has actually led to greater indebtedness in many cases rather than sustained income generation' (Dastidar 1999: 18).

Most analysts agree that JRY and EAS are much more successful instruments for fighting poverty than IRDP. Shah *et al.* (1998) in an analysis of the impact of RPWPs on rural unemployment concludes:

- ▼ That RPWPs have played a significant role in tackling the unemployment problem in India, covering one in every four to five rural unemployed persons; but
- ▼ That the funds earmarked for these programmes need to be increased at an even faster rate for them to be able to cover all those in need of work (Shah et al 1998: 181–182).

The latter conclusion is supported by several studies that argue that the impact of RPWPs has been limited in comparison to the problem of unemployment and poverty. Their coverage has also varied across regions, with the better-off areas getting a larger share of benefits. A number of studies point out that programmes such as the JRY play only a marginal role in employment creation (Dastidar 1999).

These conclusions are borne out in official studies. In an Evaluation Study by the Planning Evaluation Organisation of the Planning Commission, it was reported 'that the scheme did not provide employment to the extent expected, as the average number of days for which a person received employment was 11.44 days during 1989–1990, 15.68 days during 1990–1991 and 12.81 days during 1991–1992' (Saxena 1996:22). Official reports (NIRD 1998) admit that 'the extent of employment generated was not enough for a sizeable number of poor to cross the poverty line. In Gujarat, it generated full employment for 2.2 per cent of the poor, equivalent to 100 days of employment for 5.9 per cent of the poor. Employment generation per beneficiary was around 30 days' (Saxena 1996: 25).

# Institutional Arrangements for Implementing APPs: the Thrust towards Decentralisation

During the past two decades, the contents of APPs have remained fundamentally unaltered, except in one respect. This is with regard to the institutional mechanisms designed for the implementation of these programmes. There has been a steady shift from paramount reliance on the development bureaucracy at village to district levels, to more genuinely participatory institutions. Even prior to the 73<sup>rd</sup> Constitutional Amendment, JRY as against earlier RPWPs marked a decisive transference of authority to panchayat institutions for conceiving and implementing APPs.

This major shift derives from the belief slowly gaining ground that the objective conditions of the poor are unlikely to improve unless poor people are directly involved in the process of formulation and implementation of decisions affecting their lives. The failures of APPs to significantly impact on poverty were attributed, with substantial justification, to the insensitivity, corruption and anti-poor biases of the development bureaucracy. The transfer of responsibility for APPs to local elected bodies was seen as a paradigm step in empowering the rural poor to decide their own destinies. This process was

commenced in 1989 with the introduction of JRY, which reduced greatly the discretion of district and block authorities by providing for automatic allotment of 80 per cent funds according to a prescribed formula directly to every village panchayat, and accorded full discretion to the panchayats to select and implement the works.

Decentralisation was strengthened by the watershed 73rd Constitutional Amendment of 1993. Prior to the 73rd amendment, PRIs were not able to acquire the status of viable and responsive people's bodies for various reasons, such as absence of regular elections, prolonged supercessions, inadequate representations of weaker sections such as SCs, STs and women, inadequate devolution of powers and financial resources.

The 73rd Constitutional Amendment of 1993 sought to address these problems, by providing for regular elections to panchayats; reservation of seats for SCs/STs and women (33 per cent) and measures for strengthening finances of local bodies at all levels; planning and implementation of APPs for a uniform three-tier structure of panchayats at the district, block, and village levels; periodic auditing of accounts; and specification of areas of responsibility for panchayats at different levels. These measures were expected to reduce significantly the vast chasm between the institutions of governance and the poor.

In the context of APPs, the DRDAs have been merged with the District Panchayats or Zilla Parishads (ZPs) in many states. DRDAs are the principal agencies for implementation and monitoring of most APPs. The merger of DRDAs with Zilla Parishads or District Panchayats, has effectively shifted this responsibility to the apex level PRI in the district, namely the Zilla Parishad. In many states, the chairperson of the ZP is no longer the District Collector, but is instead the chairperson of the Zilla Parishad. However, this merger has not yet been undertaken by all state governments.

In the wage-employment programmes, JRY clearly envisaged that most of the funds would be utilised by PRIs at various levels. As stated earlier, the official instructions laid down that not less than 70 per cent of the funds allocated to these districts would be distributed to village panchayats, and 15 per cent to intermediate panchayats (i.e. block panchayats, panchayat samitis, mandal panchayat etc. whatever the names given in the states). The remaining 15 per cent were to be utilised at the district level, i.e., by DRDAs/Zilla Parishads for interblock/village works.

It is significant that in the revamped JGSY, which has replaced JRY, the entire funds are being placed at the disposal of village panchayats, to assist them in supplementing rural infrastructure. This represents a thrust towards further decentralisation. The new instructions for JGSY reveal a recognition that village panchayats need to be empowered with certain financial and administrative powers to facilitate their independent functioning. Accordingly, now the village panchayats will have the power to sanction works/schemes upto Rs20,000. In many states, village panchayats are not sufficiently equipped with staff or funds to be able to bear the burden of administrative expenditures. It has, therefore, been decided to allow village panchayats to incur expenditure up to Rs7,500 or 7.5 per cent of funds, whichever is less, in a year on administrative expenditure/contingencies and for hiring technical consultancy services.

In contrast, for EAS it is the District Collector who remains in charge even after the revamp of implementing structures, and who in turn is empowered to select the implementing agencies. The latter are mainly district level line departments, although interestingly, a March 1998 amendment also includes PRIs at all three levels among possible implementing agencies for EAS.

It was widely believed that these measures to entrust PRIs with the planning and implementation of APPs would loosen the stranglehold of the bureaucracy on village level government programmes, reduce corruption and enhance transparency and local accountability. It was expected that they would promote the participation of the village community in development decision making, and in the control over natural resources. PRIs were expected to become more responsive, representative, transparent, autonomous and accountable.

Evidence from West Bengal suggests that involvement of panchayats did improve performance of SEPs, in the sense that a greater number of programme beneficiaries have been able to cross the poverty line. However, in most other parts of India, both among policy makers and academics on the one hand, and in the field on the other, there was quick disillusionment about the actual performance of PRIs on many of these yardsticks.

As a result, increasing faith is now being reposed in the institution of direct democracy, i.e. the gram sabha, or the assembly of all adult residents of a village. The 73rd Constitutional Amendment makes provision for the establishment of a gram sabha in each village, to exercise such powers and perform such functions as the legislature of a state may, by law, provide. This is a provision of great importance in so far as the active functioning of the gram sabha would ensure a vibrant democracy with a great degree of transparency and accountability.

The manuals for the APPs now empower gram sabhas for selection of beneficiaries and works. In practice, however, with the exception of the path-breaking people's planning exercise in Kerala, the gram sabha remains, in most parts of the country, a weak and non-functional institution. The gram sabha tends to be highly passive and disempowered, with very low participation by women and other underprivileged groups. Its impact on decision-making by the village panchayats has so far not been significant.

Even more important than the authority of the gram sabha over the planning and implementation to APPs, is the power of social audit of all APPs given to the gram sabha. The Government of India declared the year 1999 as the 'Year of the Gram Sabha', and issued detailed instructions which provide legal outcomes to the social audit by the gram sabha. However, except in situations where leadership has been provided by radical people's organisations like the Mazdoor Kisan Shakti Sangathan in Rajasthan,<sup>4</sup> most gram sabhas have not been able to mobilise the requisite will or skills for social audit.

The general failure so far of gram sabhas to enforce more effective targeting, or reduced corruption and greater accountability in the

implementation of APPs is because their capacities have not been built and they have not been adequately mobilised and organised. Many analysts continue to see hope in the institution of the gram sabha for more effective implementation of APPs (Gaiha et al 1998). On the other hand, researchers like Oldenburg (1999) suggest that excessive faith in gram sabhas stems from a middle-class suspicion of politicians and that ultimately it is PRIs themselves as representative institutions that need to be strengthened. There also remain serious doubts about whether disadvantaged and disempowered groups, which are intended to be the focus of all APPs, would find voice and be able to influence the decisions of the gram sabhas.

Whereas the general trend in official policy regarding the implementation of APPs is in the direction of enhancing the authority of PRIs and the gram sabha, there continues to be some evidence for the persistence of official ambivalence. The 1999 instructions for SJGSY transfer the selection of beneficiaries for loans to the gram sabha, which at least in theory reverses the stranglehold of the local development and bank bureaucracy. The new instructions again require a team comprising two officials, BDO and the banker, together with the Sarpanch (as separate from the committee of elected panchayat members) to interact with the BPL families for the identification of beneficiaries.

In subsequent sections we would be examining the major problems associated with APPs. The problems may be fundamental or intrinsic, design flaws or implementation problems. We will consider each of these kinds in turn.

### Sectoral Ghettoisation of Poverty Concerns in Policy

The most fundamental flaw in the entire anti-poverty strategy of the Government of India is what may be best described as the sectoral ghettoisation of poverty concerns in government policy. It is assumed that rural poverty is a problem that can be adequately addressed separately from the overall content and thrust of planning and policy. Scholar administrator N C Saxena, Secretary of the Planning Commission, writes of the belief (amongst policymakers) that

Economic development and reduction of poverty require two different strategies. It is believed that whereas the former set of policies have to be geared to increase the production and need not take into account the interests of the poor, the latter is the responsibility of the Ministry of Rural Development which has no control over the anti-poor policies followed by other Ministries and which are justified in the name of economic development. How existing policies of other departments impact on the poor is hardly analysed by the rural development departments of central and state governments. What is needed is 'mainstreaming of poverty concerns' through overhauling of the policies of all government departments, under close supervision of the Planning Commission (Saxena 1996: 1–2).

This narrow sectoral view of rural poverty is bound to fail in a situation in which the mainstream of government policy is either neutral or in fact damaging to the interests of the poor.

The incendiary controversy around big dams is a fitting metaphor of this dilemma. Whereas big dams are perceived in policy as indispensable instruments for irrigation, agricultural growth, flood control and power, their opponents point out the pauperisation and heightened inequality engendered not only by the forced displacement of large poor populations, but also by the large-scale, capital and risk-intensive technologies promoted in this model of development.

The pursuit of SAP despite the diverse negative impacts expected from it underlines the view that in the perspective of government, poverty is a limited concern to be addressed by targeted technocratic solutions, independent of the overall macro-economic policy.

As we have observed, in the design of these technocratic solutions poverty is narrowly defined by professionals and policy makers in terms of low income flows and low assets, to the neglect of the range of interlocking social and political aspects that affect the poor, such as low nutrition and health, lack of education and access to service, social vulnerability and political powerlessness (Chambers *et al* 1990). When poverty is measured, it is in terms of income or consumption flows. The implication for policy is that even these sectoral,

technocratic solutions to poverty then address only those aspects of poverty that are being measured.

Saxena (1996) also highlights the neglect of non-monetary policies in favour of budgetary expenditures in designing instruments to combat poverty. He debunks the implied belief common among policymakers that 'spending of money is in itself a necessary and sufficient condition for poverty alleviation' and points out that 'certain government policies harm the poor much more than the benefit that accrues to them through money-oriented schemes like the IRDP'5 (Saxena 1996: 1).

### **Neglect of Redistributive Measures**

A second fundamental flaw in the entire strategy of APPs is the neglect of direct redistributive measures. It is admitted in policy documents that land is the paramount rural asset, and the most powerful source of economic and social well being in the rural context. It has been estimated that of the households below the poverty line 40 per cent are landless labourers, 45 per cent are small or marginal farmers, 7.5 per cent artisans and only 7.5 per cent are others. Thus, landlessness or very small uneconomic holdings characterise the existential reality of most of the rural poor.

Bandyopadhyaya (1986) has estimated that with an individual land ceiling of 12 hectares per cultivator, the estimated surplus in 1980–1981 holdings works out to 9.85 million hectares, which is quite a significant quantity of land. As against this, the total surplus actually distributed is only 1.73 million hectares to 3.88 million beneficiaries. Tenancy reforms aim at abolishing all intermediary interests and giving land to the recorded tenants. However, with the exception of a few states like West Bengal, tenancy reforms also remain an unfinished, and usually wilfully neglected, state agenda. Therefore, land reforms (not only implementation of ceiling laws, but also tenancy reforms etc.) continue to have great potential in assisting small and marginal farmers and the rural landless to gain access to land, given the requisite administrative and political will.

However, the APP strategies implicitly suggest an abandonment of belief in the viability of land reforms in ensuring access of the rural poor to the fundamental rural resource land. Indirect attacks on poverty through the IRDP strategy seem to deny the efficacy or realistic potential of land reforms to attack rural poverty.

Whereas land reforms potentially are the most significant structural measures for overcoming poverty because of the continued centrality of ownership of agricultural lands, the livelihoods, security and dignity of the poor are also critically linked to their access to a range of other natural resources. These include wastelands, common lands, forests, minerals and water. Any battle against poverty must include as part of its central strategy, effective measures for the establishment or restoration of the control of poor rural communities over these critical natural resources.

At present, the state retains hegemony over these resources, often in conjunction with large private corporate interests. By way of illustration we will look at some examples of the barriers established by the state to the access of poor communities to forest resources for sustainable livelihoods.<sup>7</sup>

It has been estimated that there are about 100 million forest dwellers in the country living in and around forest lands, and another 275 million for whom forests continue to be an important source of livelihood and means of survival. About one million are estimated to be bamboo and basket weavers. However, most state governments have allocated bamboo supplies at highly subsidised rates (less than one per cent of market rate in Orissa and five per cent in Gujarat) to the chapter industry, whereas artisans have no allocations and are forced to steal for their livelihoods. Most NTFPs are nationalised, which instead of improving the bargaining power of the poor, have often benefited traders and created monopolies. There are several bans on processing and value addition, so much so that in Orissa tribals can collect hill brooms, but cannot bind these into a broom, nor can they sell the collected items in the open market.

In recent years, significant progressive interventions like Joint Forest Management (JFM) schemes, and pro-people laws like the provisions of Panchayats (Extension to Scheduled Areas) Act, 1996 have created legal spaces to restore, at least partially, community control over forest resources. However, the progress is halting, because forest departments at the state level resist giving away of their powers, and the influence of private industry including multinationals and trade remains powerful.

### Neglect of Institutions of the Poor

A third fundamental flaw in the formulation of anti-poverty strategies has been state neglect of the institutions of the rural poor. It is important to stress that an interventionist state has a significant role in combating poverty, by strategic planning and resources allocation, as well as by creating a pro-poor legal and regulatory environment. However, I have observed that in the first phase, the state was largely dependent on its bureaucratic apparatus for the design and implementation of the programmes. This machinery lacked the commitment, ideology, skills, training or accountability to deliver reliable and sustainable outcomes favouring the poor. The political leadership, by and large, has not displayed the ideological capacity and will to ensure redistributive justice.

I have already noted at some length how there has been a partial acknowledgement of this fundamental flaw during the past decade, and that increasing responsibility for APPs now vests with PRIs and gram sabhas.

However, the actual design of APPs remains in several ways centralised and bureaucratic. The programmes are designed to 'deliver' development to an inert and passive mass of the poor. The participation, empowerment, assertion and organisation of the poor are essential components of any strategy for poverty alleviation. This is essentially a political process, in which the poor seek and secure access to resources such as land, natural resources, credit, health, education etc., to sustainably improve their position.

There have been stray but extremely significant examples of successful release from poverty by organised and sometimes informal groups of the poor like watershed committees, forest committees and women's thrift groups. This process of building conscious and assertive institutions of the poor needs to be the fundamental fulcrum of all APPs.

However, programme designs of APPs did not acknowledge until recently the centrality of any kind of organised 'social mediation'. In the context of SEPs, this would involve processes by 'which poor borrowers are encouraged to organise themselves into groups and given awareness training in the importance of regular savings and credit discipline in an attempt to build up mutual support systems and peer group pressure and to instil in them a greater sense of self-confidence' (Saxena 1996: 18). The restructured SJGSY envisages credit assistance to groups of poor borrowers, and this is undoubtedly a step forward, but the problem of limited capacities of implementing agencies to midwife such social mediation remains.

Among policy makers and even activists and academics, there is growing faith that a mobilised and empowered gram sabha would provide the most effective legal institutional space for the organisation and assertion of the poor. However, the reality of deep schisms and inequalities of class, caste and gender in the village community continues to engender doubts about whether the poor will genuinely succeed in securing voice and assertion in the gram sabha and be able to sufficiently influence its decisions.

#### **Credit or Product Constraints**

A basic limitation of credit-based self-employment strategies is its implied assumption that the principal barrier to the large-scale generation of self-employment opportunities among the rural poor is the absence of assets, resulting from the lack of access to credit with a subsidiary bottleneck in the absence of requisite skills. It is assumed that there exist in rural India numerous viable projects that the poor wish to embark on, but they are constrained mainly by their failure to access credit markets. Siamwalla (1993) describes such a view as the 'credit constraint view'.

As we have seen earlier in our discussion of these schemes, it was on the basis of the assumption, whether overtly stated or not, that the IRDP and TRYSEM schemes were launched.

However, an alternate view is that the principal bottleneck to the large-scale generation of self-employment opportunities in backward rural economies of the country is not absence of access to credit or skills, but lack of effective demand, markets, infrastructure and resources which the programme does nothing to address. Siamwalla (1993) describes this as the 'project constraint' view, according to which 'it is not credit but the absence of viable projects which the poor could implement that holds them back. (Siamwalla 1993: 296).

The success of the Grameen Bank in Bangladesh appears to support the 'credit constraint' view because it has demonstrated that once credit, even at high interest rates, is available, the poor have been found to easily use the credit in new and profitable activities. However, Siamwalla (1993) argues that this success is the result of the small-scale of the effort. Once a programme on the massive scale of IRDP is taken up, a large number of activities are bound to encounter often insurmountable constraints on the demand side for the products and on the supply side for inputs. There is also evidence that programmes like the Grameen Bank have only succeeded in reaching the better-off among the poor, and not the least endowed among them.

It is possible to overstate the contrast between 'credit' and 'product' constraints. Poor people suffer severe credit constraints, and credible credit programme like Grameen and SEWA have shown that microcredit definitely helps, despite 'product constraints'. However, the empirical evidence from the field also generally suggests a high impact of the 'product constraints'. In remote, very poor tribal hamlets in many parts of Madhya Pradesh, I have observed grocery shop and tailoring shop loans awarded in such mindlessly large numbers, that a remote forest hamlet on a hilltop with 30 households may have loans for tailoring and grocery shops for as many as 10 households each. This works out to incredible ratios of one shop for three households, patently unviable even in upmarket enclaves of Manhattan or Tokyo.

In poor agricultural regions, there are a few activities related to raising agricultural productivity, such as wells, lift irrigation and land development, that do not require the same linkages with external markets that non-agricultural activities require. But the limitation is that these programmes do not benefit the poorest, namely the landless. In practice, the Concurrent Evaluation of IRDP (Ministry of Agriculture 1990) states that only around three per cent of IRDP cases in the all-India perspective were for cases related to agricultural productivity or irrigation.

### Other Design Failures of Self-Employment Programmes

SEPs for non-agricultural activities also assume an entrepreneurial and risk-taking market model, with regard to the poor. Many analysts argue that not only do poor people usually lack the capacity to bear risks involved in negotiating and predicting markets and vital technical and management skills, but that in fact in a project-constrained world, it is normatively wrong for government programmes to encourage the poor to engage in risky activities, because of their precarious living standards (Siamwalla 1993). 'It would be better to raise their exposure to the market gradually and provide some training before thrusting self-employment programmes that involve an element of risk-taking...Voluntary agencies (such as SEWA in Gujarat and UP) have an important role in making the programmes more effective by providing necessary support services to the women's groups' (Dastidar 1999: 18).

Further, as Saxena points out, the SEPs make a distinction between 'the acceptable use of credit for productive purposes and its unacceptable use in consumption, which is an artificial construct in the context of poverty. About two-thirds of the borrowing of the poor in India is for consumption purposes (all of it from the informal sector) of which three-quarters is for illnesses and household needs in the lean season' (Saxena 1996:18). The subsidy encourages borrowers to quickly exchange subsidised assets for cash, to avail use of consumption needs. The programmes also 'totally neglect savings, in the mistaken belief that the poor cannot save at all. In the absence of any system for encouraging even minuscule but regular savings, a great deal of IRDP

credit gets diverted to emergency consumption needs' (Saxena 1996: 18). Ghate (1996) also argues that:

The massive amount spent on subsidies which has by and large not accrued to beneficiaries at all would be much better spent on agriculture, rural infrastructure and social security. Growth in the First two of these are essential concomitants of credit, and the third an alternative to credit for those who for reasons of old age or disability have few if any productive micro-enterprise opportunities (quoted in Saxena 1996:17)

The major onus for providing credit to the poor under SEPs remains on formal banking institutions. This involves highly-paid staff with low motivation to work with the poor, and high transaction costs. There are also mixed messages from their superiors, because credit to the poor is (incorrectly) viewed as risky and inviable. There are also no incentives for the borrower to ensure timely repayment.

### Implementation Difficulties of APPs: Mistargeting

Whereas RPWPs are conceptually far more sound than SEPs, they share with SEPs a range of implementation difficulties. We have already noted that RPWPs ensure basic subsistence, in the form of some degree of food and economic security to the resourceless and unskilled rural poor, without requiring entrepreneurship and risk-bearing capacity on there part, or access to market, infrastructural and technical linkages. They also have a stabilising influence on agricultural wages. However, RPWPs like SEPs suffer from extremely grave implementation problems, which may be classified as mistargeting, corruption mismanagement. We shall consider each of these in turn.

The empirical evidence generally supports the conclusion that in terms of targeting, SEPs have been much less successful than RPWPs. Targeting implies making sure that the benefits from these programmes reach only the target population (the population below the poverty line). Dastidar (1999) describes a distinction made in the literature between E and F errors in targeting. 'E-errors measure the proportion of non-poor among the total number participating in the programme, whereas F-errors measure the proportion of poor

population in the programme area excluded from programme benefits' (Dastidar 1999: 15).

It has been noted that with respect to the IRDP that a significantly large number of the programme beneficiaries tend to be non-poor. Similarly 'the E-errors are greater for IRDP than the wage employment programmes, implying that the inclusion of the non-poor is greater in case of the IRDP. Also the combined index (E+F) is greater for IRDP, implying less accurate targeting of the self-employment component. Some authors argue that is fact, the poorest are deliberately kept out of the programme as they lack motivation and capacity to make use of self-employment opportunities' (Dastidar 1999: 19). BPL families are unscientific and haphazard, and numerous evaluation studies have established that in practice, by and large, the village and block level functionaries do not take the gram sabhas into confidence in the selection of beneficiaries, and are often open to influence by the local elite groups.

One great advantage RPWPs is their self-targeting nature. Since benefits are linked to physical work, it is expected that only the ablebodied poor would seek wage employment in the RPWPs. Most studies report that in fact most beneficiaries of RPWPs are eligible. For instance, the Concurrent Evaluation Report (1992) of the Ministry of Rural Development found that 54.71 per cent of JRY workers were landless labourers 32.26 per cent were marginal farmers, 696 per cent were small families 333 per cent were artisans and only 2.73 per cent were others.

According to a study, 90 per cent of those working under the EGS were poor. In general we may conclude that for RPWPs, E-errors referred to earlier are very low. However, some studies (for instance Gaiha et al. 1998) suggest that non-eligible persons also benefit from RPWPs. This is accounted for partly by corruption, including false muster rolls. But this has also been explained by the level of wages offered under the JRY or EAS. 'Where these wages are higher than the prevailing market wage rate in the village, there is incentive for the non-poor to participate in the programme' (Dastidar 1999: 16). On the other hand, F-errors are high under employment programmes

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as many of the poor are generally not covered because of low allocations. I will return to this last point subsequently.

### Corruption

The second set of implementation difficulties that subvert seriously the beneficial outcomes of both SEPs and RPWPs relate to corruption. Most independent evaluation studies report that 'in case of the IRDP, corruption and payoffs to middlemen are pervasive. Very often middlemen 'capture' the subsidy component of the loans, thus increasing the cost of such operations both for the borrower and for the government' (Dastidar 1999: 19). The subsidy component of the loan combined with the powerful pressures on the poor to secure consumption liquidity to bridge periods of distress and want, enable those charged with the implementation of the programme to share the subsidy and resell the asset. The vast dispersal of the programme and the powerlessness of the intended beneficiaries lead to poor supervision, and a range of corrupt and exploitative practices, such as fictitious supply only on paper or supply of sub-standard assets, and demands of graft or commissions. 'Corruption in RPWPs also leads to poor quality of asset creation by the programmes, which together with the lack of maintenance create assets that are of little long lasting value' (Dastidar 1999: 16).

Similarly, RPWPs are on a tiny scale but have such enormous geographical dispersal, that substantial leakage, corruption and irregularities in the implementation of public works become inevitable. This has been confirmed by virtually every independent evaluation study. The transfer of responsibility for implementing rural works from the lower bureaucracy to local bodies is by itself no guarantee for the elimination of these maladies.

It is only through a highly altered regime of transparency and right to information, and the genuine engagement of empowered *gram sabhas* in social audit, that the poor may be able to exercise some control on corruption.<sup>8</sup>

### Mismanagement

The management of APPs is a challenge, which requires commitment and skills lacking both in the development bureaucracy and PRIs. The challenge of assisting very poor families to cross the threshold of poverty on a sustainable basis, and the massive range, quantum, dispersal and managerial challenge of the programmes of Ministry of Rural Areas and Employment (MORAE), require huge investments in human resource development (HRD), very little of which is forthcoming. This problem is largely ignored, while scarce resources continue to be invested in these programmes. The Draft Sixth Plan (1978-1983) envisaged individual beneficiary oriented schemes as being an integral part of a total plan for the block (Draft Sixth Plan 1978–1983). This required programme managers to assess the scope and viability of specific individual schemes in the overall context of availability of infrastructure, resources and markets, and to plan systematically to fill in these gaps, in order to make individual schemes viable. Therefore, in practice, the attempt has been to deal with selfemployment of the rural poor in isolation. The revamped version of the SEPs, the SIGSY requires the drawing up of a comprehensive plan of resources and strategies for poverty eradication for every block, and the identification of four or five activity clusters in each block based on local occupational skills and resources. It also provides for a plan for marketing of goods produced by SJGSY groups. All this obviously requires a high degree of managerial professionalism, rarely available at the district and block levels.

With growing emphasis on the central involvement of PRIs and user groups of women and watershed committees, HRD requirements extend to these elected persons and committee members. The development bureaucracy also needs to be trained and sensitised to work with and share power with or give it up to these people's organisations. Further, since increasingly the *gram sabha* or entire assembly of village residents are being given legal powers in many APPs, capacities for exercising these powers for self governance of all adult village residents are also imperative.

The same scarcity of technical and managerial skills for implementing RPWPs persists because of the absence of any concerted attempt (except notably in West Bengal) to train village—level *panchayati raj* elected representatives and the development bureaucracy. This results not only in low technical quality of work but also in enormous wastage.

The programmes, are implemented in isolation from other poverty alleviation programmes like IRDP, as well as agricultural development programmes. There is no attempt consciously to use the wage employment programmes to fill up infrastructural gaps that would enable other self-employment and agricultural programmes to generate viable and stable employment on a sustainable basis.

If RPWPs are to provide employment not only in the course of their creation but sustainably, projects taken up under wage employment programmes should be chosen not only for their immediate employment potential. The effort simultaneously needs to be for improving agricultural productivity, or more generally the natural resource base, thereby raising employment sustainably. That is, the strategy for poverty alleviation should be closely inter-linked with the strategies for agrarian development or more broadly rural development (Dastidar 1999). However, in practice a shelf of projects is rarely prepared in advance and therefore, the selection of project is usually ad hoc and arbitrary.

# Restructuring of APPs or Marching Faster to Stand at the Same Place

The range of fundamental problems with the APPs, particularly the SEPs, are now well known.

As would be clear by now, most of the serious limitations of SEPs described above are intrinsic to the programme strategy, independent of failures in its implementation. I have argued that it is inadequate to pursue a self-employment strategy based on providing credit and skills to the resourceless and unskilled rural poor, in isolation from a broad-based strategy of improving effective demand, infrastructure, human resource development and thereby, real access to markets and resources.

Despite widespread awareness of these inherent limitations, the government continues to stubbornly pursue ostrich-like a determined target oriented approach, of 'raising' through self-employment schemes a fixed number of poor families every year above the poverty line. What is more, this policy is pursued uniformly for all blocks in

the country in regions of vastly differing endowments, potential and need. In the large majority of backward areas, this results in mechanical soulless fulfilment of targets on chapter, with real results only in terms of burgeoning corruption, cynicism and further indebtedness of the poor.

The result is not only the criminal squandering of scarce state resources set aside to assist the poor, or damage to credit institutions. Even more culpable and tragic is the recurrent failure of target-driven but fundamentally flawed programmes designed to assist the poor, but that result in their further indebtedness and impoverishment. Straddled with the burden of bad debts, the poor are not eligible for further credit from formal institutions. Empirical studies have shown that in villages flush with IRDP assistance, other formal or informal sources of credit tend to dry up. The pressure for recovery of bad debts, and the need to restore eligibility for short-term assistance such as crop loans, leads to distress sale of fixed or moveable assets to repay bad debts, and consequently to further pauperisation. The failure of IRDP has been debilitating to the poor in other ways as well. These programmes draw the poor into a complex web of corrupt governance, by throwing to them a few crumbs.

The Government of India and the Planning Commission have from time to time set up a number of committees to propose changes in the APP strategy, of which only the most recent (1998) was headed by Prof. Hashmi, Member, Planning Commission. The consistent approach of these committees is to focus on the implementation difficulties of these programmes, to the neglect of fundamental design flaws.

The approach of the Government of India has mainly been – tinkering with the content of the programmes to address some implementation problems, whereas the broad thrust of strategy to combat rural poverty has remained fundamentally unaltered for over two decades. The Finance Minister in his budget speech of 1999 announced what were touted to be sweeping changes to rationalise the strategy. In practice, however, what was achieved was changes in names, the merger of some programmes, but the central reliance of SEPs remained intact.

There were, of course, some welcome improvements in the revamped SEP, now called the Swarn Jayanti Gram Swarozgar Yojana (SJGSY). Most important is shift of emphasis from lending to poor individuals to lending to groups of individuals in selected activity clusters. Collective borrowing is expected to lead to economies of scale as far as loan utilisation is concerned.

However, the drawback of 'project constraint in a stagnant and poor rural economy, (examined in depth earlier) remains unresolved, indeed unaddressed. There are patently unrealistic expectations about the outcomes of these programme. The guidelines of SJGSY (1999) estimate that the poverty line in the next plan period would be in the vicinity of Rs24,000 per annum (p.a.). The guidelines state, therefore, that the objective of the programme is for the microenterprise to yield a monthly income of Rs2,000 net of repayment of the bank loan. Much larger doses of credit are encouraged to enable fulfilment of this goal.

Let us presume that a loan of Rs1,00,000 is given to a non SC/ST poor family. The loan component (after subsidy of Rs7,500) is Rs92,500. If the loan is to be repaid in five years at a rate of interest of 12 ½ per cent p.a., total debt servicing annually would work out to around Rs30,000 p.a. The income aimed at is Rs24,000 p.a. Presuming that prior to the assistance, family income was Rs8,000 p.a. The total returns then expected per annum from the third year onwards is Rs46,000. This implies a rate of return of around 46 per cent per annum. Such returns are rare even in upmarket commercial investments. To expect such returns from an agriculturally backward, resource-poor rural hinterland is utterly futile. Therefore, even with perfect implementation, the programme cannot yield the expected result.

Amongst the RPWPs, the JGSY, the new avatar of the JRY has made the creation of community village infrastructure its main objective, and therefore, its direct impact on poverty as a wage-employment programme is diluted. Detailed guidelines of the revised EAS had not been issued until the writing of this chapter, but indications are that the assurance of 100 days of employment for every poor worker is being deleted. In any case, as we observed, allocations were too

small for the objective of employment assurance to be achieved even in the past.

An even greater source of worry is the reported instruction that EAS funds should not be used for watershed programmes, in a major reversal of earlier instructions that as much as 50 per cent of EAS funds must be earmarked exclusively for watersheds. It is possible to conceive of the gradual tapering of a wage-employment guarantee programme only if wage-workers are engaged in the creation of assets which would continue to generate employment for the poor in the future. In the context of the rural poor, an important component of ongoing wage generation strategies would be to strengthen agricultural productivity in dryland agriculture, for which participatory watershed development is a central strategy.

The mandatory requirement in the past of watershed development in EAS was an extremely welcome recognition of the paramount significance of this for ongoing livelihood promotion for the rural poor. Evaluation studies have appreciated the positive impacts of watershed development in states like Madhya Pradesh and Andhra Pradesh. Any move to reverse this policy would be extremely regressive.

### Recommendations

From this chapter, it is clear that any significant impact on rural poverty can be achieved only if the state does not ghettoise rural poverty into one Ministry of the Government of India. It must be perceived as a comprehensive and central concern of all government policies and plans.

The state cannot impact on poverty without recourse to redistributive measures to enhance the secure access of the rural poor to a wide range of assets inextricably linked to their livelihoods, such as agricultural land, forests, wastelands, ground and surface water resources and minerals. Poverty can be overcome only with far greater equity in policies of education and health.

Further, the process of overcoming poverty must be recognised as a political process, involving the motivation, organisation, articulation and assertion of the poor. It cannot effectively be delivered as a technocratic solution from above on a passive and inert populace. Any strategy to combat rural poverty must therefore be by and around institutions of the poor.

APPs have so far attempted to address a much more narrower canvas for supplementing or strengthening the livelihoods of the rural poor. Even within this much more limited framework, the central reliance on credit assistance for self-employment is fatally flawed for the non-agricultural sector in agriculturally backward areas. Instead, the SEPs should be retained only as demand-driven, group programmes to raise agricultural productivity of the rural poor, and for the creation or enhancement of non-agricultural livelihoods for the rural poor living in agriculturally prosperous, resource-rich, economically buoyant regions.

For most of rural India, poorly endowed in terms both of resources and markets, the RPWPs would continue to have relevance in providing social security to the able-bodied among the rural poor, in strengthening their resource base for sustainable livelihoods, and for agricultural wage stabilisation. If the programmes include a food-for-work component, they also provide food security.

However, meagre allocations to RPWPs limit their effectiveness. A number of studies have established that although wage-employment programmes have been constantly expanding, the quantum of resources is still woefully inadequate to mop up the enormous backlog of rural unemployment and under-employment. At these levels of allocation, and in the absence of a guarantee of wage-employment to all those demanding work, wage-employment programmes do not provide reliable cast-iron economic and food security cover to the rural poor.

Despite the many implementation difficulties associated with RPWPs, there is no doubt that for backward and poorly endowed rural areas, wage-employment programmes with a food-for-work component carry far greater potential for poverty alleviation than any other. However, to be meaningful, they must have a guarantee component, whatever

the implications for the exchequer, so that all poor rural workers must have the right to demand and receive wage-employment on public works in the vicinity of their homes. In fact, guarantee to employment should be transformed from a programme to a legally enforceable right. As Shah *et al* (1998) argue:

A constitution which feels obliged to protect the right to private property, must surely feel similarly obliged to guarantee the right to work to its labour force, especially when almost half a century of planned development has failed to do so (Shah *et al* 1998: 182).

In the literature, advocates of such an employment-guarantee programme have come to differing estimates of its financial implications. To give just three examples, Asthana (1988) estimates that a credible guarantee could build up from an initial investment level of about Rs30,000 million in the first year to about Rs45,000 million in the third year. Dandekar (1986) estimates that Rs46,700 million need to be transferred as wages to the rural working poor to raise purchasing power and cross the poverty line. If we add another Rs46,700 million to account for material costs and skilled labour inputs, the annual financial outlay works out to Rs93,400 million.

In a more recent estimate, Shah et al (1998) estimate unemployment in rural areas in 1993–1994, using NSS ratios. The cost of providing 150 days (lean season) full employment per person is then worked out at the statutory minimum wage. Total cost of the programme is calculated by assuming a wage to non-wage ratio of 70:30 (Shah et al 1998: 183). Their estimates are summarised in Table 12.

Thus, according to their estimates, 'the total cost of providing this employment guarantee is between Rs38,393 million and Rs1,07,502 million, depending on the concept of unemployment used. The total expenditure on all wage employment programmes was already Rs27,430 million in 1993–1994. Therefore, the additional funds required for guaranteeing full employment in rural areas works out to less than one per cent of GDP even at the most liberal estimate of open unemployment' (Shah et al 1998: 184).

A commitment of resources on this scale should not be considered excessive if it assures livelihood and food security to the rural poor.

Table 12
Estimated Cost of Rural Employment Guarantee in India, 1993–1994

	Units	Urban Schemes	CWS	CDS
Unemployment	Million	5.97	8.96	16.72
Daily Wage Bill	Rs mn	179.17	268.75	501.67
Annual Wage Cost (WC)	Rs mn	26,875	40,313	75,251
Total Cost (TC)	Rs mn	38,393	57,590	107,502
TC/GDP	per cent	0.54	0.81	1.52
TC/BE	per cent	2.71	4.0	7.56

Notes: 1. Wage bill is worked out @ Rs30 per person per day.

Wage cost is estimated @ 150 days of employment per person.

Wage costs (WC): Non Wage Costs (NWC): 73:30.

GDP (Gross Domestic Product at Factor Cost) = Rs7,071450 million in 1993–1994. BE (Central Government's Annual Budget Expenditure) = Rs1,418530 million

in 1993–94.

Source: Shah et al 1998.

If the programme is supplemented by a food security guarantee programme for all rural poor not physically capable of working in RPWPs, there can be a strong argument for diverting subsidies from the poorly targeted Public Distribution System (PDS) to these guarantee programmes. Also, if our recommendation that SEPs are transformed from a target-driven to a demand-driven programme is accepted, substantial resources would be released which could be invested in RPWPs.

Opponents of RPWPs view these as programmes for short-term relief from poverty, and suggest that such a strategy based mainly on doles is not sustainable, and may also be ultimately inflationary with greater damage to the interests of the poor.

Such a perspective derives from the traditional view of relief works, executed extensively during famines, during which it was considered sufficient for a person on relief work to unproductively break stones through the day. The actual performance of RPWPs has also shown a distinct and consistent preference for material-intensive construction of roads, building and paving of village streets, to the exclusion of labour-intensive structures for raising agricultural productivity.

However, this flaw need not be considered intrinsic to RPWPs. On the contrary, this problem, along with the absence of a legally enforceable guarantee, can and must be remedied in a revamped employment guarantee programme. The remedy would be that all works under the programme must be carefully linked to strengthening the livelihood resource base of the rural poor.

A range of activities may be considered in this regard. Firstly, the programme must address itself to the needs of dryland agriculture, which accounts for 70 per cent of cultivable area but only 42 per cent of total foodgrain production (Godbole 1990). Participatory watershed development and micro-minor irrigation schemes in dryland areas can help raise agricultural productivity, especially if coupled with drought-resistant seeds and sustainable dryland agriculture practices. Even the landless can benefit if community access to water resources is coupled with equitable water rights even of the landless. Plantation programmes in forest and revenue wastelands, implemented through co-operatives of the rural poor, and linked to the livelihoods of the landless, the biomass needs of the poor and raw material needs of artisans, can potentially absorb sustainably large masses of the rural, and particularly tribal, poor. Extraction of all minor minerals, and even the technologically simpler major minerals, can be restricted to co-operatives of landless poor.

In this way, if strengthening the livelihood resource base of the rural poor becomes the central kernel of the RPWPs, supported by a reformed pro-poor regulatory rights regime, RPWPs will no longer be relief doles to be continued in perpetuity. Instead, they would be a key element of a targeted growth strategy for ensuring sustainable development, while at the same time dismantling the inequitable structures of pervasive and chronic rural poverty.

### **Endnotes**

- For a discussion of the rationale of such a strategy and its implications for poverty alleviation, see Tendulkar (1983). Tendulkar and Sundaram (1988) provide a useful, albeit somewhat technical, discussion of issues in poverty measurement.
- 2. See, for instance, World Bank (1997) which states that '[I]t is through rapid growth that India will be able to reduce poverty and generate resources to invest in the health and education of the people who will in turn sustain this growth'. For a detailed critique of this view, see Gaiha and Kulkarni (1998), and the review of literature earlier in the book (Chapter 1)
- 3. For details of the debate, see Dev and Ranade (1997).
- 4. For a fuller analysis of the contribution of the Mazdoor Kisan Shakti Sangathan to social audit, see Harsh Mander (1999). Also Chapter 7 of the book.
- For a detailed exposition on anti-poor laws and policies, see Saxena (1996).
   Also refer to the Report of Independent South Asian Commission on Poverty Alleviation (1992).
- 6. This hides *benami* holdings of surplus lands, or undetected cases of land recorded in the name of the poor but actually held by ineligible rich farmers. Thus, real surplus is substantially higher.
- 7. For detailed exposition, see Saxena (1996)
- 8. For a detailed exposition on this theme, see Mander (Mimeo) 'Corruption and the Right to Information'. Many of these issues were also addressed by a consultation organised by LBSNAA for preparing draft guidelines for operationalising transparency and social audit in the implementation of MORD's anti-poverty programme at Tilonia, Rajasthan on 13th and 14th October, 1998 which this author attended.

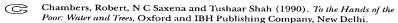
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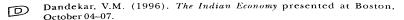
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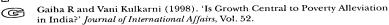
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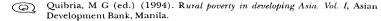
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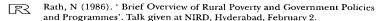
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# The State and Urban Poor People in India NO TIME TO CRY

### Introduction

Urban poverty, even though more starkly visible to the makers of policy, has engaged governments in India far less than rural poverty, both in terms of the range of interventions and the scale of financial outlays. It remains, for the most part, an area of significant and persistent neglect in public policy, despite evidence of burgeoning urban populations with stubbornly high levels of both absolute and relative poverty.

Indian planners have measured absolute poverty mainly in terms of economic deprivation, or lack of access to the resources that would be required to achieve a minimum calorie intake. According to this measure, urban poverty declined from 41.2 per cent in 1972–1973 to 20.1 per cent in 1987–1988. However, the officially constituted Lakdawala Committee on poverty recommended an upward revision of the estimates of urban poverty nationally to 40 per cent of the total urban population. The report estimated that in 1991, out of a total urban population of 217 million, 86 million or 39.83 per cent survived below the poverty line.

It is likely that even this is an underestimate because measures of urban poverty often exclude some of the poorest settlements, of squatters, street and pavement dwellers who are without an 'address' (and being destitute, unemployed or casual daily workers, are among the poorest). Also excluded in many cases are settlements of housing workers in the construction industry (the largest single employer, with perhaps the highest number of deprived poor families). Based on the Lakdawala estimates, whereas 'the percentage of people in poverty declined significantly from 56.4 per cent in 1973–1974 to

39.3 per cent in 1987-1988 in rural areas; the figure for urban areas declined to a lesser extent from 49.2 per cent to 40.1 per cent. In 1987–1988, for the first time the percentage of urban poor (40.1 per cent) surpassed that of the rural poor (39.3 per cent) in the country' (Venkateswarulu 1999).

The relative neglect of urban poverty in Indian social policy is sometimes sought to be justified by the fact that the proportion of urban population to total population is only 25.72 per cent (1991 census). However, in absolute numbers India's urban population is the second largest in the world (after China). The ratio is estimated to be around one-third in 2000, and is expected to rise to as much as half of the total Indian population by the year 2025, according to the Ninth Plan Document (1997-2002).

A major part of urban growth is the result of rural-urban migration. Majumdar, points out that 79 per cent of rural migrants in Delhi live in squatter settlements (Majumdar, 1983: 24).

There is evidence that this migration is largely due to healthy 'pull' factors in highly urbanised states like Maharashtra, Gujarat and Karnataka. However, less industrialised states like Andhra Pradesh, Madhya Pradesh, Bihar, Orissa and Uttar Pradesh have also shown significantly high rates of urbanisation, which can be explained largely by the distress 'push' factors. In other words, especially in backward regions of India, a major part of rural-urban migration is due to populations being pushed out of vast stagnant rural hinterlands, as a result of unbearable poverty, unemployment, assetlessness, low wages and absence of alternatives. A number of studies have also shown that at least some rural-urban migration is motivated by the desire of members of lower castes to escape intolerable caste oppression and untouchability. And finally, the 'push' factor can operate even more literally due to displacement consequent on 'development'. The classical example of this is the displacement of tribal people from the common property resource of forests countrywide, their consequent pauperisation and ultimate resort to migration. An especially poignant and stark instance of this is of the primitive tribe of Saharya in the Gwalior region of Madhya Pradesh, who exhibit

Trend of Urbanisation in India

Table .

						Tempo of ur	Tempo of urbanisation (per cent per year)	cent per year)
Census	Total Population	Urban Population	No. of towns/ UAs	Percentage of urban population to total population	Decadal urban growth rate (per cent)	Annual exponential growth rate	Annual gain in percentage of urban population	Annual rate of gain in percentage of urban population
1901	238,396,327	25,851,873	1,827	10.84	00.00	0.00	0.00	0.00
1911	252,093,390	25,941,633	1,815	10.29	0.35	0.03	-0.06	-0.51
1921	251,321,213	28,086,167	1,949	11.18	8.27	62.0	60.0	98.0
1931	278,977,238	33,455,989	2,072	11.99	19.12	1.75	80.0	0.72
1941	318,660,580	44,153,297	2,250	13.86	31.97	2.77	0.19	1.56
1951	361,088,090	62,443,709	2,843	17.29	41.42	3.47	0.34	2.47
1961	439,234,771	78,936,603	2,365	17.97	26.41	2.34	0.07	0.41
1971	548,159,652	109,113,977	2,590	19.91	38.23	3.21	61.0	1.08
1981	683,329,097	159,462,547	3,378	23.34	46.14	3.83	0.34	1.72
1991	844,324,222	217,177,625	3,768	25.72	36.19	3.09	0.24	1.02

Note: 1. Including Projected Population of Assam, 1981. 2. Including Projected Population of Jammu and Kashmir, 1991. Source: Census of India, 1991 (Provisional Population Tolal) Pepæ-2 Rural-Urhan Distribution.

some of the lowest indices of health, education and employment, and migrate in large numbers to cities in search of survival. All large development projects also leave behind an unseen trail of human suffering and destitution.

However, the *Report of the National Commission on Urbanisation* (NCU) (1988), while accepting that rural and urban poverty are inextricably interlinked, also takes the view that this does not mean that urban poverty is merely a spillover of rural poverty. According to the Commission, it is an autonomous, independent phenomenon. No matter what employment programmes are started in rural areas, they cannot meet the demand for tens of millions of new jobs required for people who will continue to migrate to urban areas over the next decades, which will have its impact on both urban employment and poverty. Therefore, according to the NCU (1988), rural poverty and urban poverty must be seen and addressed simultaneously as two aspects of a single problem and at the same time as autonomous problems that need to be addressed in distinct ways.

The existential experience and reality of the urban poor, as established by innumerable micro and macro-level studies, is a life of insecure low-wage, low-productive employment, poor and uncertain shelter, low access to basic amenities such as clean drinking water, sewerage and sanitation, and poor nutritional levels.

The urban slum dweller suffers from certain social problems that the rural poor do not face. Some of these are:

- Urban migrants from the countryside have been cut off from their community. They are new to the urban environment and they feel alienated and lonely in this new system. However, they are rarely completely atomised, because of the prevalence of a rural-urban continuum, which usually allows them to retain strong links with families and communities in the village that they have left behind.
- Social security systems, both formal and informal, which survive in the rural areas, are not nearly as developed in the urban areas. In the villages, the neighbouring family is a family which has been

one's neighbour for generations, and one can always fall back on it in times of need, but this is not usually the case in urban areas.

- → The cost of living in urban areas is higher than in the rural areas;
- → The rural economy is still not fully monetised, while in urban areas, one has to pay for everything in money; for instance fuel is not available by foraging but has to be purchased. Moreover the natural environment usually provides, even if minimally, in most times of scarcity in the countryside. This kind of unpurchased support from nature is unavailable in cities.
- → The physical environment in which the majority of the urban poor are forced to live is usually far more degraded, and mostly illegal, in comparison to the environs of the rural poor.
- Most of the rural poor have some land and cattle etc., which serve as insurance against bad times. The urban poor have no such asset security, only their labour power.

In this way poor people in most urban areas are forced to live in cramped, overcrowded and unsanitary conditions, and are highly dependent on public bodies to provide goods and services (water, health care, regulation of job contracts, etc). This is not from choice, but because they have much less control over their immediate environment than in rural areas. Options for support from family and community-based networks and safety net systems (developed over generations in rural villages) are limited. They live among strangers, who they do not necessarily trust, and rely on short-term transactions, which can be completed immediately, more than enduring relations moulded and nurtured by tradition in the countryside. However, to complete the picture, it must be acknowledged that with all their loneliness and stresses, cities also provide the only escape from oppressive feudal and patriarchal structures, untouchability and hopeless, grinding poverty, to the many who are trapped in these conditions in rural India.

The Ninth Plan Document identifies the main features of urban poverty as follows:

◆ Proliferation of slums and bustees²

- ◆ Fast growth of the informal sector
- ◆ Increasing casualisation of labour
- + Increasing pressure on civic services
- Increasing educational deprivation and health contingencies.

This listing excludes some vital elements, such as an illegal existence, in terms of both livelihoods and shelter; which are imposed by state policy, and the resultant insecurity, criminalisation and violence. There is need to acknowledge also the special burdens borne by women, their physical insecurity, poor health, lack of privacy and sanitation insecurity.

We shall consider some of these elements in subsequent sections, particularly relating to shelter, health and livelihoods.

## Shelter and Access to Basic Facilities

The most visible manifestation of urban poverty is in the crowding of large masses of the urban poor people under the open sky, completely vulnerable to the extremes of nature, or in precarious and unsanitary slums in sub-human conditions of survival. The pervasive dirt and grime of slum or pavement settlements fuel middle class prejudices, as though the residents choose such a life, rarely acknowledging that their situation is the direct outcome of state policy. In this section, we will examine more closely the related phenomena of homelessness and slums, and seek to identify possible causes and solutions.

It is interesting that in the global participatory research effort in 23 countries entitled Consultations With the Poor, designed to inform the World Development Report 2000–1, poor people distinguished clearly between the nature of rural and urban poverty. Whereas respondents in rural areas placed strong emphasis on food security in their definitions of poverty, along with lack of employment and assets; in cities, on the other hand, the major theme of poor respondents themselves was the immediate environment. They spoke of crowded and unsanitary housing, lack of access to water and violence within and outside the household (Brock 1999).

The most stark and visible denial of the right to shelter is manifest in relation to urban homelessness.<sup>3</sup>

The Census of India defines the notion of 'houseless population' as the persons who are not living in 'census houses'. The latter refers to 'a structure with roof', hence the enumerators are instructed 'to take note of the possible places where the houseless population is likely to live, such as on the roadside, pavements, drainage pipes, under staircases, or in the open, temple-mandaps, platforms and the like' (Census of India, 1991: 64). This part of the population includes those sleeping without shelter, in constructions not meant for habitation and in welfare institutions can be called literally homeless (United Nations 1999).

The 1991 census estimated that the numbers of homeless households by this definition in India are around 2 million. (See Table 14)

Table 14

Number of Homeless Households and Population by Sex,
1981 and 1991

		Homeless Population			
	Number of Homeless Households	Total	Male	Female	
1981*					
Total	629,929	2,342,954	1,376,512	966,442	
Urban	209,520	618,843	406,154	212,689	
Rural	420,409	1,724,111	970,358	753,753	
1991+	<u> </u>		•		
Total	522,445	2,007,489	1,180,368	827,1221	
Urban	216,917	725,592	471,077	254,515	
Rural	305,528	1,281,897	709,291	572,606	

Note: \* Excludes Assam

+ Excludes Jammu and Kashmir

Source: Census of India, 1991. Office of Census Commissioner, Government of India, New Delhi.

This is likely to be a gross underestimate, because this is a notoriously difficult population to survey. It has, by definition, no stable address,

no ration card (which in many parts of India is much more than an instrument to access subsidised food; it has become a *de facto* identity card), it usually does not appear on any voting lists. And because, as we shall observe, this population has been rendered illegal by the law, it would tend to avoid any contact with representatives of the state.<sup>4</sup>

The United Nations Centre for Human Settlements, Nairobi in its Report (1999) points out that there may be less visible types of homelessness.

People sleeping rough, which means in the street, in public places or in any other place not meant for human habitation, are those forming the core population of the 'homeless'. Those sleeping in shelters provided by welfare or other institutions will be considered as a part of this population. Persons or households living under these circumstances will furthermore be defined as houseless. Another, not obvious side of the problem is concealed houselessness. Under this category fall people living with family members or friends because they cannot afford any shelter for themselves. Without this privately offered housing opportunity, they would be living in the street or be sheltered by an institution of the welfare system. Another group living under the threat of 'houselessness' are those facing the risk of losing their shelter either by eviction or the expiry of the lease, with no other possibility of shelter in view. Prisoners or people living in other institutions, facing their release and having no place to go are considered as part of this population. The notion we propose for this category is of people facing the 'risk of houselessness' (Mimeo).

In a continuum with the houseless, are those who are precariously housed, and who live mainly in slums. The term 'slum' is used in a loose sense to designate areas that are overcrowded, dilapidated, faultily laid out and generally lacking in essential civic services.

A nationwide survey of slums was conducted by NSSO in its 49<sup>th</sup> round (covering a six-month period between January and June, 1993). It estimated that there were 1,17,227 'declared' and 'undeclared' slums in the country during the reference period of the study. Of these, 56,311 slums (around 48 per cent) with 59.34 lakh households were in the urban sector. Assuming five persons per household, the total

estimated population in urban slums comes to 29.67 million. The notable feature of the findings of the survey was the non-existence of slums in the states-Union Territories of Arunachal Pradesh, Goa, Jammu and Kashmir, Manipur, Mizoram, Nagaland, Tripura, Andaman and Nicobar Islands, Dadra and Nagar Haveli, Laskhadweep and Daman and Diu.

Due to definitional problems, and problems of dealing with the transience of marginal populations, forced on to the wrong side of the law, to which we have already referred, it is likely that these are gross underestimates. Independent studies have established that any thing between a quarter or one-third of the population in most cities and towns lives in slums or are precariously housed or houseless, and that at least half the population in slums are below the official poverty line.

Swelling populations, fragile and insecure incomes and a legal and regulatory regime that is extremely hostile to the urban poor, combine to exclude poor people from safer, higher value sites in the city. Instead, they are crowded in precarious or illegal locations, such as open drains, low-lying areas, the banks of effluent tanks, the vicinity of garbage dumps, open pavements and streets and survive in chronic fear of eviction, fire or flood. Housing for those who do not sleep in the open is in shambles – literally.

In these crowded, illegal and insecure settlements, there is acute denial of minimum basic amenities required for human survival.

Twelve per cent of the urban population does not have access to water supply and 57 per cent does not have access to sanitation. In states where the poverty incidence is high, the percentage of population without access to water supply and sanitation is extremely high (Mathur 1994: 49).

In slums, 40 per cent of households are without access to safe drinking water, and 90 per cent without access to sanitation. Per capita daily consumption of water in Class I cities is less than 142 litres, reaching a low of 50 litres in some cities. Income poverty estimates do not capture municipal dimensions, such as actual access to water by poor

The Ripped Chest No Time to Cry

groups. Even in cities claiming 100 per cent coverage, per capita availability varies 10 times between poor and rich locations.

For example, in Ahmedabad, the wealthier 25 per cent of the population consumes 90 per cent of water supplied, while the remaining 75 per cent of the population has to make do with only 10 per cent of the water. In Calcutta, water supply in slums is about 75 litres per capita per day (lcd) whereas in non-slum areas it is about 220 lcd, respectively (Vanderschueren *et al* 1996).

The situation is even more desperate in smaller municipal towns, because here even for richer groups, municipal services are inadequate and sub-standard. In a small sample survey conducted by this researcher with literacy workers in 1997 in a slum of Bilaspur town in Madhya Pradesh, it was found that 83 per cent of the residents were illegal encroachers without *pattas* or legal land tenure. Less than one per cent of the residents had individual toilets, and another 13 per cent accessed community toilets. An overwhelmingly large percentage of 86 per cent were compelled to use only open spaces for their ablutions.

The young literacy workers, who lived in two slums of Bilaspur town for four months as part of this study, found that almost three-quarters of the dwellings in the slum were constructed by powerful outsider encroachers, and that they extract illegal rent for the encroached dwelling units. They coerce rent even for the right to draw water from the few available public drinking water sources in the slum. Their major source of water for cooking, bathing and washing is dirty waste water, left over after the washing of railway wagons. Municipal authorities throw dead carcasses of animals into the nearby cesspool of sewerage water, which makes breathing, eating, sleeping unbearably oppressive, for as long as the carcass decays. During the rainy season, several hutments are half-submerged in water, so that people are condemned to walk, cook and sit waist-deep in stagnant water in their homes for days after every downpour. Infants die often and early, women of all ages look wilted and pinched; according to the evocative description of one young volunteer, they look always like 'vegetables that are stale after four or five days'. They found

children routinely locked out of huts at night because there was no privacy for sexual activity of adults within, and the children made the streets their homes each night. They found covert sex work within families with the consent of the husband, gambling dens, drug centres and illegal hooch manufacture. For the young researchers, mostly rural youth or college graduates from lower middle class households, nothing had prepared them for the levels of degradation that they encountered and of sub-human living that the slum dwellers had been forced into.

It is important to stress once again at this point, that such degraded and unhygienic living is not by any means chosen by slum dwellers, as is implied by often vituperative middle class opposition to slums, not to speak of condemnatory judicial pronouncements and draconian demolition drives. Instead, it is the cumulative impact of state policies, which on the one hand fail to overcome conditions that produce and reproduce desperate rural poverty, and on the other block all legal access to affordable shelter and livelihoods to the urban poor.

In conditions of such abysmal hygiene and sanitation, it is not surprising that health conditions in slums are deleterious, to which children are particularly vulnerable. Infant mortality rates are higher by 1.8 times in slums as compared to non-slum areas. Diarrhoea deaths account for 28 per cent of all mortality, while acute respiratory infections account for 22 per cent. Nearly 50 per cent of urban child mortality is the result of poor sanitation and lack of access to clean drinking water in the urban slums. Disease epidemics are strongly correlated to site location and cramped space; fly-borne and respiratory diseases are easily spread, especially under conditions of poor sanitation and the inhalation of fumes. Mental health problems are also high, because of the stressful, lonely, alienating environment, cut off from traditional, emotional and social security support systems.

In any analysis of the problems of the urban poor, it is important to disaggregate their population and to recognise that there are some particularly vulnerable groups, even more at risk in an environment of urban poverty. A study by the National Institute of Urban Affairs

(NIUA), quoted by the NCU, 1988 (*ibid.*), points out that 68 per cent of the urban poor are women, who are considered socially expendable and entitled to the poorest nutrition and health care. Single women-headed households and girl children are particularly assailable in these circumstances.

Among other most defenceless groups are the aged who are without care, people with disabilities, the homeless and people living with leprosy, mental illness and AIDS. There are no reliable surveys available to estimate the actual proportion of these groups in the total population. But case studies portray sub-human conditions of stigma, exclusion and a desperate struggle for survival.

To take one example, the leprosy patient beggars in Nehrupalli and Gandhipalli (Cuttack) have lived in these colonies for the past 15–16 years. The total population of the two leprosy colonies is 5,115 covering 1,177 families. Out of these 1,177 families, 1,000 are on private land and the rest are on encroached land belonging to the government. Almost 1,000 of these families eke out living through begging. The fear of prejudice regarding this disease is so deep-seated that even the closest of relations are eager to terminate contact with persons suffering from this disease. These leprosy patients are ostracised and kept out of home and city. Begging is considered to be a normal source of earning one's livelihood<sup>5</sup> (Jaday 1999).

The evidence indicates also that there is a much higher incidence of poverty among SCs and STs than is warranted by their proportions in the general population of a city. The data from the Hyderabad study presented in Table 15 illustrates this by comparing the percentages of SCs and STs in the slum population with those in the district. As can be seen in the table, it ranges from more than three times as much in the case of SCs, to over 10 times as much in the case of STs.

Of paramount vulnerability in conditions of urban poverty are children, and particularly those who are especially at risk, such as children without adult care, street and working children, and children of destitute and stigmatised parents. They are vulnerable because of

Table 15

Percentage of SC and ST Population: Hyderabad Slum and District

Category	Percentage of district population	Percentage of slum population (N 90255)	
SC	10.0	35.5	
ST	0.6	7.0	

Source: T. Rajgopalachari: 'Study of Pattern of Employment and Unemployment among SC and ST of Hyderabad'. Council for Social Development, 1985.

poor sanitary conditions, inadequate nutrition, psycho-social stresses, exclusion from schools, erratic or unreliable adult protection or sometimes its absence, and the coercion to work. 'According to the 1991 Census, the urban literacy rate in the country is 57.4 per cent. However, the literacy rate of people below the poverty line has been estimated at 28.1 per cent by the National Institute of Urban Affairs (NIUA) and at 26 per cent by the Task Force on Housing and Urban Development. The school enrolment and retention rates in the urban slums are alarmingly low' (Venkateswalu, 1999). The study of the Bilaspur slum referred to earlier found that 23.5 per cent of children had never enrolled in schools, whereas 16 per cent of them were school dropouts. A study of several squatter settlements in Delhi indicated that as many as 91 per cent of the squatters are illiterate and 80 per cent of the parents wanted their children to help in domestic work and earn more income for the family rather than go to school.

For children who are forced to work, conditions are particularly precarious.

Children in poor households are engaged in debilitating forms of work, that not only keep them in poverty but are hazardous to life and ultimately rob them of the personal development that society offers to other children. Children usually start working in extremely arduous jobs at a very early age and never get the opportunity in subsequent years to go to school or to achieve incomes to raise them above the levels of extreme poverty, even after attaining adulthood. Most children never learn to read or write, and are often treated as bonded rather than salaried labour, receiving unimaginable low pay for the demanding work they do. The common characteristics of work for

children are long hours and extremely harsh working conditions. Even when not working for a wage, children in poor families are often assigned to the increasingly time-consuming task of gathering water and household energy resources (Venkateswarlu 1999).

#### State Policy and Slums

Despite stated commitment in official documents to ensuring access to housing to the poor, actual investments in this regard have been niggardly and misdirected. Law as well as administrative and judicial prejudices aggravate this. In effect, these have not only consistently blocked the access of the urban poor to shelter, but have also rendered illegal and criminalised the endeavours of the poor to survive, not with the help of; but despite the state.

We shall examine in this section official stated policy, policy practice, law and judicial pronouncements in relation to housing, urban land, slums and houseless people. Whereas under the Indian Constitution, urban policy and planning are state subjects, in practice very few state governments have enacted independent policies in this regard. Therefore, the urban policy enunciated by the central government in successive five-year plans, and centrally sponsored urban poverty schemes form the core of urban policy even of state governments.

The major preoccupation of the post-colonial state has been capital accumulation for the purposes of economic development (Kothari 1991; Vanaik 1990; Chatterjee 1994). During the First and Second Five Year Plans, it was assumed that the poor would benefit from the strategy of economic development that laid heavy emphasis on industrialisation. The issue of urban poverty was implicitly acknowledged only in the context of shelter and that also in an extremely limited way.

The heart of the shelter problem of the urban poor can be seen for a significant proportion of the population in terms of lower income in relation to the existing market prices of housing. The problem was recognised as such in the First Five Year Plan, and a conscious policy decision seems to have been made in favour of subsidising housing rather than increasing their wages.

While accepting that housing is essentially a private, self-help activity, the government officially recognised the necessity for state intervention to meet the housing requirements of the 'weaker sections of society'. This position was outlined in the Housing Policy from the First Plan itself, when housing for 'low and middle income groups' was given a high priority. In the Second Plan, housing programmes of the First Plan were expanded and a policy of 'slum clearance' was introduced. The Third Plan emphasised co-ordination of efforts of all agencies i.e. public, private and co-operatives, as also re-orientation of programmes to the needs of low income groups, land acquisition and development, preparation of master plans and regional development plans of metropolitan towns and research in building techniques. The Fourth Plan stressed on controlling land prices, providing financial assistance to co-operatives and private efforts and in assuming legal powers for reconditioning of slums.

The Fifth Plan was significant in its acknowledgement that despite two decades of planning, large-scale poverty in India persisted. It stated candidly that 'large numbers have remained poor'. The Fifth Five Year Plan, however, made no distinction between rural and urban poverty. In terms of housing, it gave emphasis to preservation and improvement of existing housing stock through statutory legal, regulatory and fiscal measures and stressed on the optimum use of land, making available land for housing purposes particularly for Economically Weaker Sections (EWS), as also to prevent concentration of land ownership.

The Sixth Plan (1980–1985) marked a relatively higher priority to the alleviation of poverty, although even this Plan did not address urban poverty issues directly. The public sector was assigned a promotional role in urban housing, whereas the responsibility of providing the majority of the required housing stock was left to the private sector. The role of the public sector was limited to slum improvement, housing for urban poor and encouragement of organisations like Housing and Urban Development Corporation (HUDCO) for channelising resources to the private sector.

The Seventh Five Year Plan (1985–1990) constituted the first conscious attempt to address the issue of urban poverty directly. It

took explicit note of the 'growing incidence of poverty in urban areas' and pointed out that the persistent migration from rural areas has led to the rapid growth of slums in many cities and towns. The Seventh Plan accordingly placed considerable emphasis on what it described as 'improvement in the living conditions of slum dwellers'. It clearly demarcated the role of the public sector, viz. resource mobilisation, provision of subsidised housing for poor and land acquisition and development. The core strategy of the Eighth Plan was to create an enabling environment for housing by eliminating various constraints and providing direct assistance to disadvantaged groups. The Housing Policy, 1994 laid emphasis on assisting people and in particular the houseless, the inadequately housed and vulnerable sections. The Ninth Plan focused on households at the lower end of the housing market and public housing. Attention was directed towards housing solution of priority groups, SCs/STs, disadvantaged groups like the people below the poverty line whose needs otherwise may not get effectively met by market-driven forces, disabled, freed bonded labourers, slum dwellers and women-headed households.

Thus, we see that the stated policies of the government have consistently acknowledged the need to extend shelter rights to the urban poor. However, actual practice has suffered greatly in terms of abysmally low investments, misdirected subsidies, reliance on highly skewed market forces, and a legal and regulatory regime which is extremely hostile to the urban poor. The policies cannot even be described as aspirational, because the actual experience belied even these modest objectives and suggested little political will or priority for their realisation. They were also divorced from the situation on the ground and ignored what the poor have done for themselves in extremely difficult circumstances.

The entire urban development sector, which includes housing, has received consistently low allocations, mostly of less than four per cent of total planned outlay. Housing has received only one per cent of central plan allocations, and most resource-starved state governments have not added significantly to these resources. It is therefore, not surprising that there is an acute shortage of housing, especially for

the poor who are the most dependent on state interventions for their shelter. As per National Building Organisation (NBO), the urban housing shortage had been estimated at 8.23 million and was projected to decline to 7.57 million in 1997 and 6.64 million in 2001. Yet another estimate indicates that the urban housing shortage would increase to 9.4 million (Habitat– II).6

Of these meagre allocations, a major part of the subsidies, as also the entire gamut of housing policies, directly or indirectly benefit the middle or low-middle classes, or even the rich. Most housing schemes for the urban poor resort to 'brick and mortar' options, resulting in inappropriately located and designed tenements of poor standard and inefficiently high costs. What is worse, they are priced out of the range of the poor. At today's prices, even a modest tenement of 300 square feet would cost close to 1,00,000 rupees, well beyond the reach of poor residents. These are then allocated to ineligible households, or worse, they stand vacant and gradually fall into disuse as monuments of official waste. In the classic mode of bureaucratic failure, those for whom they are intended cannot afford them, and those who can afford them, do not want them.

In a study of urban housing schemes of Gujarat and Tamil Nadu, Samuel Paul has established that 'richer individuals are able to reap larger windfall gains from the housing facility provided by the government (rather) than poorer people' (Paul 1972). In another study, Kundu observes that 'because of the very design, urban housing schemes, even under extremely favourable circumstances, fail to reach the poor. The subsidy given to EWS<sup>7</sup> schemes, therefore, flows to the population in the higher income bracket through regular or irregular transfer of the properties'. Therefore it is not surprising that where such schemes have been implemented, they are either not occupied or are occupied by ineligible persons.

The problems are compounded because of administrative requirements such as a permanent address, a guarantor, and a clear and marketable title of land, approval of building plans by the concerned local authority and contribution of 10–25 per cent of the unit cost by the beneficiary. These effectively debar the urban poor

from access to formal housing schemes and loans, because they generally do not have legal title to their land, nor can they get the approval of the local authority.

Operationally, the dominant official approach to slums has been one of 'slum clearance', which continued to be the stated policy through the first three Plans. This approach, in effect, views slums, as not a result of the failure of state policy, but as a problem for which implicitly the slumdwellers are themselves seen as responsible. This policy of 'slum clearance' is usually a euphemism for the uprooting of powerless urban migrants in squatter shanties in the heart of town to low value sites in the distant periphery, as was done for instance with particular heartlessness during the Emergency of 1975–1977 in Delhi. Slum dwellers, much more than the upper class residents, for their survival need to be close to their work sites. A policy of casting them away at the periphery is a prescription for their economic extinction.

Slum clearance is a policy of forced eviction of slum dwellers from their tenements, and demolition of their shelter. State authorities may or may not provide alternative locations to those evicted under this policy, but even where alternatives are provided, these are usually at distant marginal locations, completely divorced from livelihood opportunities. Police and municipal authorities have pursued this policy with vigour in many urban areas, with substantial and often brutal use of force.

Although state policies have officially shifted in the direction of 'slum improvement' from 1972 onwards, the thrust towards forced eviction and a *de facto* policy of slum clearance continues to dominate practice. This was highlighted for instance, in a recent fact-finding mission headed by Justice Krishna Iyer, constituted by Habitat International Coalition to enquire into the demolition during the monsoon of 1997, of Bhabrekar Nagar, a hutment settlement situated in a suburb of Mumbai.

The mission concluded that the settlement was brutally demolished without any notice and without providing alternative accommodation to the residents. 12,842 families i.e. 65,000 persons were rendered

homeless with no shelter in the heavy rains. It indicted the state for having violated the 'spirit of established national and international legal and policy commitments' and the rights guaranteed by the Constitution (Adenwalla 1998).

Such instances of state brutality during forced eviction of slums are not unusual. Innumerable such instances have been documented both by researchers, and in successive public interest law suits filed by public-spirited citizens and groups. One of the most infamous instances of this, to which we have already made reference, is the demolition, during a period of eight months of the Emergency period of 1975 to early 1977, of 141,820 units in Delhi housing 700,000 people in slums and squatter settlements. The evicted population was literally dumped in 16 resettlement colonies 15–20 kilometres outside the city.

Implicit in the policy of slum clearance is a notion that dominates the urban middle classes, including policymakers and judges, that slumdwellers are in some way responsible for their own situation. Second is the notion that cities belong legitimately to the middle and upper classes, and slum dwellers are outsiders and interlopers. And finally that slums are centres of dirt, crime and vice which are a threat to the remaining – in all ways more legitimate – sectors of any city. The urban middle classes themselves feel highly threatened by the presence of the poor among them (although they need them as domestic servants, service-providers, petty traders and small factory workers), while being reluctant to divert more tax revenue to address poverty eradication.

Planners and public authorities are also influenced by the colonial legacy in urban planning, which is heavily biased towards order, cleanliness and deconcentration, where the poor typically find no place and get relegated to the unplanned periphery of the city. As pointed out by Muralidhar (1991), housing classifies and segregates the population. The type of housing determines the level of its adequacy at the physical level. On a scale ranging from palaces and bungalows at one end, to low income housing, squatter colonies and

pavement dwellers at the other, there is a progressive proportional decline in standards, in the extent of liberty and enjoyment of basic rights. Those on the lower rungs of the above order have invariably to make way, as it were, for those on the higher, on the pretext of what is inelegantly described as 'beautification'.

Governments usually justify evictions in one or more of four ways, closely echoing the middle class prejudices referred to earlier. The first (and perhaps the most common) official rationalisation in support of slum removal is to 'improve' or 'beautify' the city. A second idea that helps governments justify evictions is the view of slums as centres of crime and havens for criminals. Thus, evictions not only make the city more beautiful but rid it of concentrations of crime. Governments have also used the health problems evident in innercity tenements or squatter settlements as a justification for their clearance. The fourth justification for evictions is redevelopment, to use the cleared land more intensively, or to build public works or facilities. By imposing a perennial illegality on slums, both governments and courts now do not even seem to require a justification for their forceful removal.

Even where slum clearance is accompanied by rehabilitation in alternative sites, this reflects a narrow view of the habitat problems of the urban poor as being those of shelter or housing questions, rather than land or locational ones related to production and income generation. Thus, publicly sponsored urban redevelopment projects have, in the name of improved housing, displaced a large number of people from their centrally located communities. 'The poor have turned undeveloped and unused lands in central locations close to major engines of economic activity, into urban settlements. The combination of the type of land that is settled, land tenure status, and the low income of the households yield vast areas of sub-standard housing, often of impermanent materials, and environmentally unsound habitats. However, the land development by the poor is better suited to their livelihoods and incomes than that typically provided by the government' (Venkateswaralu 1999).

The priority given by the most poor in cities to location is perceptively documented by Rakesh Mohan, who concluded:

The poorest (e.g. fresh migrants) are mainly interested in location. Being near job markets saves on transportation costs. In their highly uncertain situation the only security they are interested in is job security. Their meagre income only allows for food consumption and other basic essentials in a kind of lexicographic ordering. The only amenity they need is space for sleeping. The next group with a reasonably stable income, but still not well-off is interested in the security of tenure. This group is willing to trade location for security of tenure. A temporary job loss or other economic misfortune does not then mean displacement of residence as well. They are also more interested in space than amenity and are willing to pay for it. Finally the richest income group is more interested in amenity, having a stable income and subsistence essentials. Electricity, plumbing, well-designed homes, recreation then become important and will be demanded by this group (Mohan, 1977).

As pointed out by Hardoy and Satterthwaite (1989), where government does take some responsibility for rehousing those evicted, the most common response is to dump them on to an undeveloped site at some distance from the city centre. Not surprisingly, the result is usually further impoverishment of those evicted. It is also common for many of those moved to such new locations to move back to another illegal development or inner-city tenement. More central locations are essential to many families to find work and contribute to the household income. In the relocation site, not only does the main income earner have high transport costs, but also opportunities for other family members to work in casual supplementary vocations like domestic work or wayside vegetable selling are severely limited.

Many studies have shown how these clearance schemes greatly exacerbate the problems of the urban poor. They destroy some of the few housing options open to poorer groups; the result of such actions is usually to make conditions even worse in other settlements, as those evicted have to double up with other households or build

another shack in another illegal settlement. Perhaps more serious than this is the damage done by eviction to the network of family, friends and contacts which individuals and families build up within their neighbourhood. This network often has enormous importance for poorer households, since it is through this that they find out about new jobs, borrow money or goods during difficult periods, share child-rearing to allow more adults to go to work, and so on.

After 1972, as we have observed, the limitations of 'slum clearance' as official public policy was acknowledged and the dominant stated policy shifted in favour of 'slum improvement'.

In theory, the policy of slum improvement implicitly recognises clearly that the slum dweller is not a law-breaker, but instead is a victim of a system that has failed to provide livelihood and dwelling space to ordinary people. Therefore, the effort must be, as far as possible, to ensure the award of legal rights to the actual homeless and assetless slum dwellers, as was done in the single most significant intervention of this kind in the country, in Madhya Pradesh in 1984 and again in 1998. At the same time, the slum dweller must be ensured basic amenities such as clean drinking water and sanitation in these upgraded slums, as a basic right of all citizens, separate from the market system of the ability to pay for these services.

Whereas slum improvement marked a significant advance in stated official policy regarding slums, one limitation as we have already observed is that the actual practice of state policy continues to be dominated by the philosophy underlying slum clearance.

A second limitation is very low political priority to slums, reflected in niggardly allocations. The major central scheme for slum improvement is the Environmental Improvement of Urban Slums (EIUS). It provides for minimum amenities like sanitary latrines, drainage, potable water supply, good approach roads and paved streets with proper lighting. Most state governments and municipal authorities rely almost exclusively on central funding for slum improvement, rarely supplementing these from resource-strapped state and municipal budgets.

Table 16 provides official figures for coverage of households under the EIUS.

Table 16

Coverage of Environmental Improvement of Urban Slums,
1990–1991 to 1995–1996

(In million)

<del></del>		Households	
Year	Financial Outlay	Target	Achievement
1990–1991	651.00	1.54	1.94
1991–1992	609.10	1.30	1.62
1992–1993	799.40	1.18	1.18
1993–1994	647.30	1.33	1.30
1994–1995	784.70	1.46	1.67
1995–1996*	1083.30	1.59	0.84

Note: \* Provisional figures.

Source: Town and Country Planing Organisation, Ministry of Urban Affairs and Employment, Government of India, New Delhi.

Even if these figures are taken at face value, they represent a tiny fraction of the total slum population (conservatively projected estimate for the year 2001 of expected slum populations is 61.83 million, as per the Central Statistical Organisation, 1997)

If we look at coverage figures more closely, even this limited coverage appears a gross overstatement. Let us take the figure (See Table 16) of coverage under EIUS for 1994–1995. A financial outlay of Rs784.70 million is said to have covered 1.67 million slum families. Even at a conservative estimate, around Rs20,000 is the minimum quantum of funds required to provide minimum basic amenities to an average slum household (even without any improvement to the actual dwelling structure). By this estimate, these funds were adequate only for at best covering 39,235 slum households, against the claims of 1.67 million. If we take into account inefficiencies and leakages in implementation, mainly through contractors, actual coverage would be even much lower.

In conclusion, then, prevailing budgetary allocations to slum improvement cover a minuscule fraction of slum population. It is important to note that allocations to the houseless are even lower. The only official central scheme for the houseless is for the creation of night shelters and sanitation facilities for pavement dwellers. The Annual Report 1998–1999 of the Government of India, Ministry of Urban Affairs and Employment, New Delhi claims a proud cumulative achievement of providing 18,470 beds, 6,814 pay and use toilet seats, 584 baths and 597 urinals to houseless in the entire country. The entire allocation of the Ninth Plan under this scheme is Rs10 million, less than what one prosperous person may spend on constructing one home.

Another extremely important flaw of all slum policies has been that they consistently neglect the fact that the formation of slums is a dynamic process. It cannot be addressed by one-off measures, which touch only the fringes. Even if the entire present stock of slums are addressed by policy, unless the root causes of slums are addressed, even the most ambitious slum improvement programmes will not address slums that would inevitably arise in the future. These problems are related to, as we shall see, to a hostile regulatory regime and low and uncertain incomes and livelihoods of the urban and rural poor.

The entry, and increasing dominance since the 1970s, of the social housing sector of institutional finance, including of the World Bank, has led to increasing reliance on such institution and taken away from state responsibility for ensuring minimum standards of housing for all. The shift is in the direction of 'affordable housing', with its strong ideological bias towards free market, non-intervention and greater reliance on market forces and private enterprise.

The major central scheme that emerged from this new thinking is the sites and services scheme. Its basic objective is to provide lowincome families with land and public utilities components of housing packages and a variety of technical and financial assistance to enable them to use self-help to build and progressively improve their dwellings. The coverage under this scheme so far, according to the report of the 'Regional Seminar on Urban Poverty by the Institute of Local Government and Urban Studies (ICGUS),1989, is 91,064 plots that have been sanctioned by HUDCO for the purpose of the sites and services scheme. Even these extremely modest claims need to be toned down extensively, using the same logic as we did in relation to the slum-improvement achievements.

Even apart from coverage, there are many flaws in the sites and services programme, which in effect once again excludes the poor. 'The central point of the project has become affordability, which was determined in the earlier World Bank projects by a rule of thumb that the poor can afford to spend 20–25 per cent of their income on housing' (Wadhwa 1988). However, studies such as that by Kundu (1993) have established that projects requiring the urban poor to spend significantly above 11 per cent of their expenditure or income (as savings are negligible) on housing cannot be sustained, given the present expenditure pattern of the urban poor. By their very design, these projects would miss the target groups and the benefits would flow to households in higher consumption brackets, as indeed has been recorded in several micro-level studies.

The role of the state has increasingly been shifted from 'provider' of housing stock to the poor to that of a so-called 'facilitator'. Subsidising housing of the poor is being debunked in favour of cost recovery of institutions to even achieve a modest surplus. Official documents now also refer to the objective of providing 'affordable' shelter to the poor, rather than ensuring 'adequate' shelter of minimum basic standards to all people. It implicitly condemns the most poor in cities to sub-human levels of shelter, if at all.

In other words, the poor are expected to ensure their own shelter in an extremely hostile legal regulatory framework, out of very low and uncertain incomes, and extremely limited access to institutional finance in relation to their needs.

However, the gravest flaw in the entire range of state responses to the unmet right to shelter of the urban poor is that it does not in any significant way alter the legal and regulatory regime in favour of women and men, girls and boys who are living in poverty. On the contrary, both law and its practice remain heavily weighted against the urban poor.

To begin with, homelessness itself is perceived in India to be a crime. Wandering persons (vagrants), wandering lunatics, 'illegal' squatters, pavement dwellers, are all 'guilty' of violating several penal statutes or statutes under which the entire enforcement is left to the police and the magistracy. In a moving study, leading Supreme Court lawyer and civil rights activist S Murlidhar points out:

Criminalising the homeless is a serious problem; wandering people of a wide variety can be defined as beggars and powers are given to the police to deal with such persons. Squatting on the pavement is nuisance under the municipal laws. Creation of nuisance can be penalised. Same is the approach of the law of trespass. Given the non-availability of space in urban centres every unauthorised dwelling would amount to trespass and be punishable as such. Housing, therefore, has law and order dimensions and there is a crying need for a human rights approach to it (Muralidhar, 1991).

In the experience of this writer, in several districts of Madhya Pradesh, large numbers of the homeless are routinely rounded up by the police. This is done usually to fulfil targets of 'preventive detention' under Sections 109 and 151 of the Criminal Procedure Code, 1973, to prove to their superiors their proactive efforts to maintain civic peace. The said sections of the Criminal Procedure Code are dependent on the subjective satisfaction of the executive magistracy that the preventive detention of these persons is indeed in the interest of public peace and prevention of crime. The magistrates rarely actually apply either mind or conscience and routinely concur with the position of the police, in order to maintain harmonious relation with the police. The homeless then languish for long periods in the jail, because they are too poor, assetless and without legal access or literacy, to secure bail or legal redressal.

Even apart from the houseless, the daily efforts of survival of most slum dwellers and urban migrants remain one of almost absolute 'illegality'. At the heart of the problem are existing laws and policies regulating urban land, which systematically exclude the poor from building or acquiring legal shelter. It is not an exaggeration to say that if you are poor in a city, there is virtually no legal recourse if you are to acquire shelter. In other words, all self-help efforts of the poor to live are condemned by as the illegal.

An equitable urban land policy would assist the poor in their access to land for shelter. In practice, land use has largely been regulated by markets or public authorities. Both mostly exclude the poor, who caught between two stools, are condemned to the unauthorised, illegal sector of the market.

The Urban Land Ceiling Regulation Act<sup>9</sup> (ULCRA) has yielded a trivial amount of land, and contrary to its stated objectives, even less has actually been used for the urban poor. The primary purpose of the legislation was to ensure equitable distribution of land and to control speculative price increase of urban land. The ULCRA placed a ceiling on privately owned vacant urban land depending on the population of the area. While under the Act, all land in excess of the stipulated ceiling vests with the state government and is to be used for housing the poor, the utter absence of political will to implement this legislation is evident on scrutiny of the relevant data. <sup>10</sup> Landholders and concerned authorities are adept at exploiting the loopholes in the ULCRA. Landholders obtain exemptions from the provisions of ULCRA even on the pretext that the surplus land is to be developed for housing for the weaker sections.

It may be noted that surplus land under ULCRA is declared government land. It has been the consistent observation of this writer that there is a reluctance to actually allocate this land for housing of the urban poor. A senior district functionary asked this writer in outrage: "How can we waste such precious land for housing for the poor?" If the urban poor occupy these lands, these are treated as encroachments.

With all its limitations, ULCRA at least was devoted to the goal of releasing some land owned by large landholders for the housing of the urban poor. The law was rescinded in 1999. A resounding chorus

of celebration accompanied this move. And in the spirit of the larger neo-liberal gamut of policies, few commentators and newspaper editorials stopped to ask that in the absence of such a law, what alternative measures were envisaged to achieve the goal of securing land for the shelter of the homeless in cities.

#### Urban Poverty and Health<sup>13</sup>

Among the many debilitating impacts of urban poverty, manifested as we have seen, in insecure, insufficient shelter in unsanitary, unserviced habitats, is the impact on the health of the urban poor.

We have noted that most official assessments of the magnitude of poverty use mainly the criterion of calorie intake or its money equivalent. This has been rejected by a number of economists, who feel that access of the population to secure and satisfactory levels of employment, shelter, basic amenities of clean drinking water and sanitation, health and education are also important indicators of poverty levels.

Public health is one of the major stated goals of town planning. In practice, as pointed out by Ritu Priya in her study of public health implications of town planning, public health was replaced by real estate as the real issue (Ritu Priya 1993). The Delhi Development Authority (DDA) master plan was essentially a 'land-use plan', and DDA itself acquired land and constructed houses for those who could afford them. These policies and public health concerns have been relegated sharply in the background.

Studies in urban slums of Delhi show a morbidity rate in children of 11–15 per cent. A study on diarrhoeal diseases showed that 26.4 per cent of children had diarrhoea within the last two weeks of survey, which worked out to about 7.9 episodes per child per year (compared to a national figure of 2.5). After diarrhoea, it is acute respiratory infections that is the biggest child killer. Tuberculosis, malaria and filariasis are other major diseases of the urban slums.

The urban environment, especially in the slums, has other specific problems too. In addition to the diseases of poverty and poor sanitation, is the impact on health of air pollution and pollution of water, especially by industries and vehicle exhausts and smoke from domestic stoves. At greater risk are the millions of workers in the numerous sweat shops, urban industries, especially in chemical and other hazardous industries as well as the slum dwellers who live just around these industries. These predispose the exposed populations not only to respiratory disease but also to a number of allergies, skin problems and illnesses of different types.

Often, even public sector companies deliberately place poor workers in unhealthy work sites to augment profits. In the heart of the capital Delhi, the management of the government-owned Indraprastha Power Station has callously located casual workers processing fly ash within its ash dump, in conditions incredibly perilous to health. On the other hand, commitment to the health of other citizens has led to draconian judicial pronouncements closing hundreds of polluting industries in Delhi, with no concern to ensure genuine and adequate rehabilitation of the resultant surge of newly unemployed and homeless workers.

The psychosocial stresses of the urban slum, especially on its major migrant labour section, also take their grim and silent toll. The spread of alcohol and drug abuse, crime and juvenile delinquency, abandoned children and rising suicide rates, are all indicators of these stresses. One study in greater Calcutta found 140 per 1,000 persons suffering from some form of mental illness. Road traffic accidents, industrial accidents and urban violence also contribute to urban mortality and morbidity significantly. One has to only count the Bhopal gas tragedy or the communal riots as 'health problems' and one would see the magnitude of these issues.

In a study, Mathur finds that the cumulative effects of poor living conditions are reflected in high infant and child mortality rates among the urban poor households. While the whole country has registered a noticeable fall in infant and child mortality rates during the past several years, poor households continue to register significantly higher rates: 62 per 1,000 population for the former and an average of 123 per 1,000 for the latter. Some cities with populations varying

The Ripped Chest

No Time to Cry

between 25,000 and 50,000 even registered 187 per 1,000 population, while some cities with a population range of 10,000–25,000 had an average of 174 (Kundu 1993).

The health infrastructure in the public sector includes: state government Primary Health Care centres; industrial hospitals, ESI dispensaries and hospitals (as part of the Employees State Insurance Scheme particularly in larger cities and towns with a large industrial sector) and Urban Health and Family Welfare Centres run by the City Municipal Corporations. All these, except the last, provide essentially curative services and do not have outreach services for slum populations. The Urban Health and Family Welfare Centres in most large cities have a theoretical coverage of 50,000, focus exclusively on maternal and child health and family planning services, and are staffed by one Medical Officer and Auxillary Nurse Midwives (ANMs) 1 ANM/5000 population.

Unlike rural areas, where government health services may be inaccessible partly because of long distances, in urban areas the inability of the poor to access government health facilities is more poignant and stark, because the inaccessible facility may be geographically located even adjacent to the slum residence of the underprivileged patient. Studies have established that about 40 per cent of the urban poor go to private doctors and another 12 per cent to private hospitals for outpatient treatment. Long distances and waiting hours as well as the attitudes of medical professionals 'have been found to discourage them from using public hospitals' (Kundu 1993).

In many urban areas there are just no government dispensaries or any maternal and child health or even family welfare or supplementary child nutrition services available. Even if available, government dispensaries provide very inadequate initial curative care. The availability of trained midwives and multi-purpose health workers per capita is often far less in urban areas than even remote villages. The private medical care that is available is costlier and seldom provides preventive care – not even immunisation. There are also very rarely any outreach family and community services for prevention

and rehabilitation of health problems arising out of the complex psychosocial environment e.g. drug abuse, alcoholism, sex work, etc.

One of the most significant attempts at urban renewal and health is the Urban Basic Services for the Poor (UBSP) Scheme. Adopted under the Seventh Five Year Plan, it envisages a package of services including immunisation, improved feeding practices, home-based diarrhoea management, drinking water supply, environmental sanitation and family welfare, with particular emphasis on the community's involvement at all stages of the project, from the pre-planning stage of implementation to monitoring and evaluation. The programme attempts to integrate water supply and sanitation services and other community development schemes with basic health care. It is thus, not an exclusive health programme and aims at improving the social and economic conditions of the slum dwellers by providing a minimum level of basic services. The objectives of the scheme are to foster neighbourhood development committees in slums to ensure effective participation in developmental activities and for co-ordinating the convergent provision of social services, income generation activities and physical facilities in slums through various programmes including the Integrated Child Development Scheme (ICDS), promotion of basic primary education programmes, adult education programme, nonformal education, etc. The programme is a joint responsibility of central, state, municipal governments and the UNICEF.

On the field there are many bottlenecks in implementing this programme or any other urban health programme.

- ◆ The UBS programme in its concept was a 'gap-filling' exercise with limited funds and limited access. But in smaller towns and cities, there is hardly any government health infrastructure, even of the kind that exists in rural areas. What is required, therefore, is not a 'gap-filling' exercise, but real investment in building a proper infrastructure.
- The programme suffers from political and administrative inattention, being quite low on the priorities of either government or local administrations.

- ◆ Often the settlements are illegal and the battle is between the administrators who would want them out and politicians who are playing on their insecurity to build a vote bank for themselves. In this tension, the health of the poor is not the priority.
- The community 'leaders' unlike in rural areas, are less responsive and are often running protection rackets. They are themselves slum lords or are close to other anti-social influences. In the absence of any electoral bodies or local committees, even identifying a community leader could be a problem.
- The existing programmes do not have any built-in component to study, monitor or intervene in issues such as chemical pollution of air and water, which are major urban problems.
- → The coverage of the UBSP scheme is low (population covered till March 1996 was 6.5 million) due to the meagre outlay earmarked for the scheme. The Central share for the scheme in the Eighth Plan was Rs100 crore. Low levels of resource allocation for the scheme led to sub-critical releases to the state governments, which, consequently, give low priority to the scheme.
- ◆ Convergence, which was one of the guiding principles of the UBSP, was the weakest part in the implementation of the scheme. Inter-department co-operation and co-ordination appears to have been weak.
- ◆ Though community participation formed the basis of this programme, community involvement could not be achieved to any desired level.
- ★ The ethos and training of municipal employees does not encourage or develop the special skills and attitudes related to community mobilisation.
- At a more general level, programmes of urban health are the direct outcomes of problems related to shelter, land policy and livelihoods elaborated separately in this chapter. Unless these problems are addressed, the status of urban health among the urban poor can never significantly improve.

#### **Urban Livelihoods**

The phenomenon of burgeoning poverty in cities and towns is related not to open unemployment (recorded unemployment in cities is less than three per cent of the labour force), but to the fact that the large majority of the urban poor are trapped in low-end jobs – insecure, low paid, low productivity with debilitating work conditions – mainly in the informal sector.

This was noted by the National Commission on Urbanisation (NCU) (1988), which states that:

The capacity of urban areas to create jobs well above the poverty line in the formal sector, has been dwindling. The capital intensity of modern urban enterprises, industrial location policy, energy crises, industrial sickness, labour unrest, restrictive legislation, frozen housing activity and low level of investment in the development of urban infrastructure and services have colluded to keep down the growth of urban employment. A non-formal sector has been growing in interstitial spaces of economic activities, ignored or exploited by the formal sector. It includes waste collection and recycling, shelter development in marginal and ordinarily uninhabitable lands, car and lorry transport, low-cost catering services, repair and maintenance services, street vending, etc.

It notes also the growing phenomenon of the casualisation of labour, which has been referred to earlier in this chapter, and child labour. To add to this long list, we may add forced relocation of slums without reference to livelihood opportunities in the new site, and the closure of polluting industries located in cities, for legitimate concerns of public health but without alternative livelihood planning, both of which we have noted earlier.

The data shows that open unemployment among slum and squatter households is strikingly low, even when children are included in the Potential work force.

One survey places the unemployment rate in the 15-59 age group at 9.2 for males and 2.5 for females; another survey places these rates at 6.0 and 3.0 per cent, respectively, for males and females in the age group over five years (Mathur 1994).

Relatively low levels of open unemployment in cities are estimated also by NSS surveys, as evidenced by Table 17.

Table 17

Number of Persons Unemployed per 1000 Persons in the Labour Force

NSS Round	Unemployment Usual Status (Urban)		
	Male	Female	
32 <sup>nd</sup> (1977–1978)	65	178	
38th (1983)	59	69	
43 <sup>rd</sup> (1987–1988)	61	85	
45 <sup>th</sup> (1989–1990)	44	39	
46 <sup>th</sup> (1990–1991)	45	54	

Source: Sarvekshana- 52<sup>nd</sup> issue. Vol. 16. No.1. July—Sept. 1992, 58<sup>th</sup> issue. Vol. 17 No.3. Jan.—March 1994. NSSO, Government of India.

However, the evidence also is that around 60 per cent of the occupations of the urban poor are in low productivity, low-end jobs with fluctuating, low wages.

According to a NIUA survey, the 15 most dominant occupations of the poor are: weavers (8.3 per cent), sweepers (6.5 per cent), unskilled labourers (6.3 per cent), street vendors (5.4 per cent), construction workers (5.3 per cent), rickshaw pullers (5.3 per cent), peons (4.1 per cent), domestic servants (3.5 per cent), petty shopkeepers (3.2 per cent), agricultural labourers (3.0 per cent), rag pickers (2.8 per cent), bidi makers (2.7 per cent), drivers (2.6 per cent), petty salesmen (2.2 per cent), and clerks (1.9 per cent).

A little over 70 per cent of the workers work long hours, in many cases exceeding 12 hours per day. Only 23.5 per cent of the poor workers reported work of less than 8 hours. When this evidence is considered in conjunction with the number of days they work in a year, it would seem that the poor do not lack work; rather, they are overworked in low-productivity occupations (Mathur 1994).

Unlike the countryside, in which livelihoods are closely linked to access to or control over natural resources, in cities these are related directly to access to opportunities for wage or self-employment. The failure of the formal sector to absorb the bloated urban labour force has led to the excrescence of the informal and casual sectors. The majority of the urban poor are self-employed or casually employed. This is aggravated by forced relocation to peripheral locations without livelihood potential. The evidence is that casualisation is on the rise in cities. A study by Sarvekshna, 1986 shows that during 1977–1983, the percentage of casual workers increased from 13.2 per cent to 14.8 per cent in the case of males and 25.6 per cent to 27.3 per cent in the case of females.

The access of the majority of the labour force to opportunities of employment that would generate a living wage are severely limited, because economic growth in the formal sector has tended to favour capital investment and limited employment for highly skilled labour. The informal or unorganised sector represents the self-help survival response of the urban poor who fail to get integrated into the highly organised, high wage, high productivity formal sector.

The working of the urban land and real estate markets which price out the urban poor also contributes to the growth of urban informal sector which encompasses various lower forms of production of goods and services. It is a storehouse of low productivity, ineffective 'employments' whether on one's own account (small commodity production) or with small-scale units. It is no answer to urban poverty but permits reproduction at a subsistence level (Kabra 1996).

There are varying estimates about the size of the informal sector. According to a World Bank study (Vanderschueren *et al* 1996) across developing regions, between 30–80 per cent of the urban poor depend partially or entirely on the informal sector for their livelihood. According to the 1991 Census the size of the informal sector in Indian cities with populations of two million plus is given below. The figures are given in percentage of the workers' population that comprise the informal sector.

This is an extremely heterogeneous sector, comprising daily wage workers, construction labour, petty traders, hawkers, street children, sex-workers, rickshaw pullers, domestic workers, etc. Labour markets

Greater Bombay	21.55% of 12.6 million.
Calcutta	19.93% of 11.0 million.
Delhi	33.06% of 8.4 million.
Madras	30.15% of 5.4 million.
Hyderabad	data not available.
Bangalore	23.50% of 4.1 million.
Ahmedabad	22.37% of 3.3 million.
Pune	27.37% of 2.5 million.
Kanpur	30.56% of 2.0 million.

remain highly segmented. The vulnerability and desperate survival needs of the unorganised workers and high levels of competition amongst the army of work-seekers, enable exploitation by employers, and sometimes middlemen, who mediate access. Labour laws regarding wages, security of employment and safety are almost universally observed in the breach.

This large informal work force is in fact the backbone of its economy, providing a wide range of low-cost essential services. Murlidhar (1991) refers to the 'bitter irony', based on an 'examination of the occupational structure of the squatter settlements in Delhi which revealed that 42.5 per cent were construction workers, that the very people who help build homes should be rendered homeless' (Muralidhar 1991: 8).

It is important to recognise that the very same prejudices of policy and law-makers that operate against the urban poor in the context of shelter that we have observed earlier, also operate equally in the context of livelihoods in the informal sector. Again, chiefly because of an anti-poor legal and regulatory regime, self-employment by the urban poor is always a hard struggle against public authorities. Without access to space and choked by a dense, opaque regime of irrational controls, most livelihoods of the urban poor in the informal sector are either criminalised, or at least unprotected by those who implement law.

A permanent state of illegality exists within slums, as licences cannot be obtained for basic utilities and for trade. Inhabited by domestic servants, Class IV employees, scavengers, unorganised and organised labour, slums as it happens are essential to a city. However, even their manifest utility to other city dwellers, is not the fundamental justification for the decriminalisation of the livelihoods of the urban poor. Even if they were not useful to the rest of the city, they would still have at least as much right to earning their living in the city with dignity as anyone else. Instead, slum and pavement dwellers are in a constant state of immiserisation and are at the mercy of the police and other authorities. A major part of their earnings goes into ensuring their survival and gaining access to basic services in this illegal environment.

However, the judiciary has consistently ignored the reasons behind the creation of slums, the daily struggle of slum dwellers both for shelter and livelihoods, and their further impoverishment by meaningless and brutal demolitions. The Court has not applied itself to the problems of slums<sup>16</sup> and has confined itself to a piecemeal approach - at the most, given very temporary relief by deferring demolitions. The endemic poverty that has led to the formation of slums does not find any mention in the Courts - in fact, in a recent judgement, the Supreme Court has only referred to the squalor and filth generated by slums.<sup>17</sup> The underlying belief that slum dwellers are criminally responsible for their own situation is a recurring subtext of most judicial pronouncements. But sometimes these beliefs become explicit, as in a recent judgement in which slum dwellers are equated with pickpockets, with the remark that to settle slum dwellers is like rewarding pickpockets. Therefore, in a clash between interests, even public interest litigation has not benefited those in the greatest need of judicial intervention.

In Indian planning, as we have observed in earlier plans, it is mainly the visible outcome of urban poverty, namely slums, that have sought to be addressed, even if marginally. Urban poverty was perceived only, or mainly, as a housing problem and no priority was accorded to the urban poor in any of the schemes in the other sectors. It was only in the Seventh Plan that the official response saw a major change

and for the first time the economic problems of the poor were acknowledged officially.

The need to give micro-credit to the poor to start their own ventures was considered important enough and the Self-Employment Programme for the Urban Poor (SEPUP) was launched in 1986. This was in a sense the urban variant of the IRDP. The main objective of this programme was to provide self employment opportunities to those urban households who are below the poverty line by giving them access to credit facilities, with subsidy amounting to 25 per cent of the total assistance. During the Seventh Plan period, in 1989, a scheme called the Nehru Rozgar Yojana (NRY) was introduced to provide employment to the unemployed and underemployed urban poor by promoting self employment through setting up of macroenterprises, and wage employment through shelter upgradation works and creation of useful public assets in low income neighbourhoods.

In the Eighth Plan, the Prime Minister's Integrated Urban Poverty Eradication Programme (PMIUPEP) sought to address the problem of urban poverty with a multi-pronged long-term strategy which envisaged bringing community based organisations to the centre of the development process by facilitating direct participation of the targeted groups. The Ninth Plan has noted that the problem of urban poverty is a manifestation of lack of income and purchasing power attributable to lack of productive employment and considerable under-employment, high rate of inflation and inadequacy of social infrastructure, affecting the quality of life of the people and their employability.

A few months after the starting of the Ninth Plan, the Swarna Jayanti Shahari Rozgar Yojana (SJSRY) was launched in December 1997, subsuming the earlier urban poverty alleviation programmes viz. NRY, UBSP and PMIUPEP. The new rationalised scheme contemplated assistance to the urban poor by convergence of employment components of the earlier schemes and sought to provide gainful employment to the urban unemployed or under-employed poor through encouraging the setting up of self-employment ventures or

provision of wage employment. The two schemes under SJSRY comprise, (a) the Urban Self Employment Programme (USEP) and (b) the Urban Wage Employment Programme (UWEP). The USEP seeks to provide wage employment to beneficiaries living below the poverty line within the jurisdiction of urban areas by utilising their labour for construction of socially and economically useful public assets. The scheme also encourages the setting up of Neighbourhood Groups, Community Development Societies etc.

In essential aspects, the 'revamped' SJSRY is merely the proverbial 'old wine in new bottles', reflecting neither significant new outlays nor approaches to the problems of livelihoods of the urban poor. The micro-credit based self-employment component of the programme, like its earlier incarnations of SEPUP and NRY and also its rural counterpart of IRDP, is based on the assumption that the main barrier to the generation of self-employment in urban areas is barriers to access to credit.

Kabra (1996) maintains that 'if entrepreneurial capabilities and markets exist for these activities, finance cannot be an overriding constraint. This is because our informal money markets can be relied upon to lend to poor people without any security'. The schemes further assume 'that there is adequate demand for goods and services, which may be produced by the loanees and that there is adequate availability of the physical assets required under the scheme and that these assets are available on reasonable prices'. Both these assumptions also are without empirical backing. The entry of new producers in more attractive trades can lead to overcrowding and a spiral of declining viability. These problems are further compounded by corruption and poor management of these programmes.

Whatever limited potential these programmes have for dismantling urban poverty, is further diluted because they are grossly underfunded in the budget. (See Table 18)

Even rural poverty programmes are significantly under-financed. (See the chapter in this book on rural poverty). However, in comparison, urban poverty programmes are acutely starved. The ratio of urban to rural poor people is 1: 3.5 while the ratio of funding for poverty programmes is 1:35.

Table 20
Outlay on Urban Poverty Alleviation

Plan period	EIUS	LCS	UBS	NRY*
Seventh Plan (1985-1990)	269.55	4.68	5.00	-
Annual Plan (1990–1991)	65.30	0.21	25.00	120.00
Annual Plan (1991-1992)	63.40	-	23.00	130.00
Eighth Plan (1992-1997)	-	-	100.00	227.00

Note: \* Nehru Rozgar Yojana was started in 1989-1990 and the funds released

ELUS - Environmental Improvement of Urban States

LCS - Low Cost Sanitation

UBS - Urban Basic Service

NRY - Nehru Rozgar Yojana

Source: Eighth Five Year Plan, 1992–1997, Vol. 2, Planning Commission, Government of India, New Delhi.

### Conclusion

In the era of market-led globalised growth, the lonely, brutalised survival of people in poverty in cities is likely to grow continuously more harsh, hopeless and insecure. It appears that any prospect of this being reversed exists only if they themselves organise to utterly reverse the tenor, content and scope of state policy and law which neither assists nor protects them, but instead embattles the state itself against marginalised people struggling in extremely difficult circumstances to survive.

#### Endnotes

- A poem by Sam Kobia about a pavement child quoted by Rudolf C Heredia, Legislation and Housing, Economic and Political Weekly, January 16–23, 1993.
- 2. Settlements comprising modest houses.
- 3. Some researchers, such as anthropologist Dupont, avoid using the term 'homeless' since it implies not only a situation of deprivation in terms of shelter but also a loss of familial moorings. She states that this term is commonly used in the North American context where it may correspond to social reality there, but as we shall see, it is inappropriate in the context of Indian cities where

houselessness cloes not necessarily mean homelessness. The concept of family stretches beyond the limits of a simple 'household' or 'home' in the Indian context where familial segments may be spatially scattered, but tightly linked through economic and emotional ties. Thus, she prefers the terms 'shelterlessness' to refer to a concrete situation (the lack of physical shelter) in a specific place at a given time; but she stresses that it must be borne in mind that the situation currently observed does not necessarily represent a permanent state and it may be compatible with the existence of a house and/or a home somewhere else (especially in the native village) (Dupont, Veronique, Mobility Pattern and Economic Strategies of Houseless People in Delhi, chapter presented to the International Seminar: DELHI GAMES: Use and Control of the Urban Space – Power Games and Actors' Strategies. Delhi, 3–4 April 1998, CSDS.)

- 4. As pointed out by anthropologist Veronique Dupont (ibid.) while the main census operation usually lasts 20 days (between February 9 and February 29 in 1991), the enumerators have only one night to survey the houseless population. Thus, for the 1991 census, they were told "On the night of February 28/March 1, 1991, but before sunrise of March, 1991, you will have to quickly cover all such houseless households and enumerate them." (Census of India 1991, Instructions to enumerators for filling up the household schedule and individual slip. Office of the Registrar General and Census Commissioner for India, Ministry of Home Affairs, New Delhi, 1991, p. 64).
- For a detailed case study of the stigma of leprosy and overcoming it, see Mander 2001.
- Quoted in Housing, Poverty Alleviation and Urban Development, Planning Commission (Draft).
- The acronym EWS refers to the government programme which aims at building houses for so-called 'economically weaker sections' of people.
- For an indepth exposition on this see Jai Sen, 'Criminalisation of the Poor' Unnayan, August 1984, with reference to laws of the Municipal Corporations. The other eye opener is B B Pande, 'Vagrants, Beggars, and Status Offenders' in Law and Poverty: Critical Essays, edited by Dr Upendra Baxi (Tripathi, 1988).
- 9. The Urban Land Ceiling Act was passed on February 17,1976 during the Emergency. It is the only enactment in the parliamentary history of India that was pushed through in less than seven hours. A Bill to repeal the Act was introduced in the Lok Sabha on June 11,1998. On the demand of 60 MPs, it was sent to a Standing Committee. The Bill was again tabled on March 5,1999 and passed by a voice vote on March 8,1999
- 10. According to an interim report published by the National Commission on Urbanisation (NCU) in 1987, out of an estimated 1,66,192 ha of vacant land, only 14,589 ha (8.78%) were acquired, and only 3,852 ha (2.32%) brought under physical possession and 621 ha (0.37%) were used for housing construction. The performance of cities in land acquisition was very poor. According to the data compiled by the Ministry of Urban Affairs and Employment in 1996, of the total, 2,20,675 ha (6.70%) could be acquired physically and only 5,327 ha (2.47%) brought under various housing schemes.

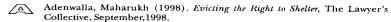
Even in Calcutta with a government committed to Land Reforms only 34.67 ha were taken in possession with regard to allotments for housing. Delhi had

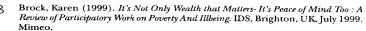
allotted nothing, Chennai only 10 ha, Ahmedabad 2.79 ha, Calcutta 4.27 ha and Hyderabad 28,343 ha.

An arbitrary power of exemption was vested with the governments to exempt any land prospectively or retrospectively from the provisions of the Act. According to the review by the NCU, 43,863.50 ha of land, which accounted for about 26% of the total declared surplus, were exempted for EWS Housing and 40,419 ha were exempted on other grounds. (Subramanyam. K.P., Nagarlok, Vol.xxxi, No.2, Apr.—Jun,1999.)

- 11. Sections 20 and 21
- 12. For example, land acquired under ULCRA in different parts of Mumbai was handed over to the Maharashtra Housing and Area Development Authority (MHADA) for development. MHADA misused the land by constructing flats measuring 900 to 1,000 square feet and costing 25–30 lakhs. (Maharukh Adenwalla, Evicting the Right to Shelter, Lawyers Collective, September 1998).
- A significant part of this section is derived from T Sundaraman and Harsh Mander 'Reaching Health to the Poor', 1996, VHAI.
- 14. 1985 (3) SCC 528.
- 15. AIR 1986 SC 180.
- 16. Almitra H. Patel and Anr. Vs. Union of India and Ors. 2000 (1) SCALE 568.
- 17. ibid

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Part Four

Chapter 6

# Of Rancid Hopes and Embattled Territories DIRECT DEMOCRACY AND GRAM SABHAS IN INDIA

In this chapter, we will examine briefly the rationale for direct participatory democracy in the context of the contemporary Indian experience. We will then look in some detail at the gram sabha or assembly of all village residents, a unique institution for direct democracy in India. We will examine closely how laws in various states in India have legally empowered gram sabhas, and scrutinise the procedures laid down for the functioning of this statutory collective. Finally we will look at two case studies of the experience of the actual functioning of gram sabhas, with regard to some aspects of self-governance.

#### The Rationale for Direct Democracy

The dominant orthodoxy in both the theory and practice of liberal democracy worldwide has been that people are sovereign, but in a practical sense they are expected to exercise their sovereignty directly only by periodically electing their representatives to legislatures and local bodies. These elected representatives would then in turn exercise sovereignty on an ongoing basis on behalf of the people until the next elections. In other words, the sovereignty of the people can be exercised only indirectly, through voting, political parties and lobbying. Their sovereignty is in practice exercised by their elected representatives on behalf of the people. In practice also, worldwide, the elected executive is dependent on the assistance of large, mostly centralised bureaucracies.

This dominant orthodoxy of liberal democracy was challenged in India, most influentially by Gandhi. Writing for *Harijan* in 1938, he

talks of his dream of an 'India continually progressing along the lines best suited to her genius'. He does not want India to develop 'as a third class or even a first class copy of the dying civilisation of the West'. He describes his alternative vision for India:

If my dream is fulfilled, and every one of the seven lakhs of villages become a well-living republic in which there are no illiterates, in which no one is idle for want of work, in which everyone is usefully occupied and has nourishing food, well-ventilated dwellings, and sufficient *Khadi* for covering the body, and in which all the villagers know and observe the laws of hygiene and sanitation (Gandhi 1959).

Elaborating this view at a time when India was at the threshold of Independence in 1946, Gandhiji is categorical that 'Independence must mean that of the people of India, not of those who are today ruling over them'. According to him:

...every village will be a republic or Panchayat having full powers. In this structure composed of innumerable villages there will be everwidening, never-ascending circles. Life will not be a pyramid with the apex sustained by the bottom. But it will be an oceanic circle... (Gandhi 1959).

However Gandhi's ideas about democracy remained at some level ambiguous and confined. His suggestion that 'every village will be a republic or panchayat having full powers', revealed his lack of clarity on democratic institutions. In a democracy, no institution should be given 'full powers'; it is intrinsically about the balance of powers.

For decades after Independence, despite reverence for Gandhi, there was scepticism in the political leadership about the relevance of his political and economic ideas for a country rebuilding its shattered economy and morale after colonisation. India's first Prime Minister Nehru instead opted for a political system closely modelled on Westminster, combined with Soviet-style centralised state planning. The institutions and structures of the bureaucracy were retained and indeed strengthened, without basic structural changes from colonial times, although with the new stated goals of nation-building and welfare.

As the country adapted itself effortlessly to the rough and tumble of electoral politics, amidst the initial charisma of large projects and the Green Revolution, considerations of equity were relatively muted or ignored in policy. For the countryside, the most important policy instrument fashioned for equity was land-reform, but the political power elite, the bureaucracy and the courts combined to ensure that its gains were severely limited. For the rest, it was believed that overall growth would automatically address also problems of inequality and want.<sup>2</sup>

In the wake of the challenge posed by widespread violent rural unrest in the 1970s, the government came forward with an ambitious package of 'anti-poverty' rural development schemes, designed to assist every poor family in India to 'rise above the poverty line'. The focus for the first time on strategies specifically targeted at the poor was a significant departure from the past, but this signified also the implicit burial of the most powerful policy instrument for battling poverty, namely land reforms. However, the delivery systems for the new battery of wage and self-employment programmes remained the same as for programmes in the past, namely the bureaucracy controlled by elected representatives, mainly of parliament and the state legislatures.<sup>3</sup>

It is significant that whereas there has been no fundamental change in the content of these anti-poverty rural development programmes during the past two decades, disillusionment with their outcomes has led to major changes in the systems of delivery for these programmes. The government does not regard the content of the strategies to be flawed. In fact, a recent 'restructuring' of the programmes by the BJP-led coalition in 1999 was no more than old ideas tricked out in new finery. The fundamental problem is seen to be only with modes of implementation, and it is this that reforms of anti-poverty programmes in the last two decades of the twentieth century have sought to address.

It was first presumed that the manifest failure of these programmes to assist poor rural families to sustainably overcome poverty, and the attendant leakages and graft, were due primarily to the fact that it was the bureaucracy which was responsible primarily for the implementation of these programmes. This bureaucracy was too powerful and unaccountable, and the control exercised over them by elected representatives of parliament and the state legislature was too remote, to keep it in rein and enforce accountability. The solution was located instead in establishing and strengthening representative democracy at the local village, block and district levels, through panchayati raj, and placing significant powers with panchayats for implementation of anti-poverty rural development programmes. This was substantially at the initiative of the central government, and the established power elite in many states resisted the devolution of their powers to local levels. In 1993, through a major constitutional amendment, panchayats were incorporated into the Indian Constitution as the third tier of government, after the federal government at the centre, and the provincial governments at the states.

The expectation, clearly, was that governance, especially from the standpoint of the rural poor, would improve substantially through decentralisation of representative democracy to the local levels. In other words, it was believed that enhancing the powers of local bodies would increase probity, accountability, responsibility and responsiveness of governance.

We will not discuss in this chapter the actual performance of Panchayati Raj Institutions (PRIs) after the watershed amendment of the Constitution of 1993. However, possibly without giving enough time for its potential to unfold, and neglecting the vastly uneven performance of PRIs in different parts of the country, hope quickly turned rancid and disillusionment set in quickly among several policymakers, researchers and activists about the potential of PRIs to ensure good governance.

The perceived failures of PRIs – including partisanship, graft, nepotism and apathy – were seen to stand in contrast to the relative success of innovative programmes that steered relatively clear of dependence on the village bureaucracy or formal panchayati raj institutions, and which located themselves instead in the community. Joint forest management showed that an empowered village

community could take responsible decisions regarding sustainable use of forest resources, and was more successful in protecting forests and increasing forest cover than the forest bureaucracy had been. The Women's Development Programme in Rajasthan showed the potential for mobilising women against gender discrimination. The Total Literacy Programme dramatically threw up hundreds of thousands of youth volunteers across the length and breadth of the country, surcharged and committed to serve their communities. Poor rural communities in Rajasthan also achieved notable success in fighting corruption in famine relief works through the instrument of 'social audit'. It must be stressed that not all analysts share the disillusionment with the performance of PRIs. Some (George Mathew, Vinod Vyasulu, et al) are optimistic about PRIs and think that their failures are mainly due to the fact that they have not been given adequate powers. Also, in practice, there are plenty of failures in community-based initiatives as well.

In a search for legitimacy, the development discourse itself slowly changed, and in time even the language of project and official policy documents altered. Programmes were now sought to be 'demand-driven', 'people's participation' became an obligatory component of all project plans, and the community was transformed on chapter from the passive recipient of development and welfare, to an indispensable partner. It is interesting that the World Bank instituted a series of consultations with the poor (1999)<sup>5</sup> co-ordinated by Robert Chambers, and one of its major findings was that even in liberal democracies, the poor felt powerless and lacked influence over decisions affecting their lives.

But whereas the buzzwords have changed dramatically in project and policy documents, ground realities have changed much more slowly, if at all. Except for some shining but basically local examples of community empowerment, in most of the Indian countryside, the local bureaucracy has remained powerful, although now in collaboration with the new local power elite of panchayats.

The perceived failure of panchayats to ensure good governance, coupled with the success of community-based initiatives, has led

development thinking in India to come full circle in a return to Gandhi, and his faith in self-governance by the village community. Gandhi's uncritical reliance on an alleged universality of interests in the so-called 'village community' shows how oblivious he was of the conservatism and inequity of village society. Ambedkar, of course, went to the extreme opposite, and I understand that he was perhaps no guru of local democracy since he distrusted village institutions so much. Yet he had a remarkably clear understanding of democracy in general, and his work on the Indian Constitution was an extraordinary achievement. It is not clear whether the contemporary focus on gram sabhas is based entirely, or even significantly, on the full body of Gandhian thought. It is interesting that in the only two states where gram sabhas are relatively successful, the dominant politico-economic ideology is Marxist, praxis social democracy - not Gandhian, illustrating the complementarity between local democracy and state action!

Whatever may be the inspiration, the outcome in most parts of rural India is a classic illustration of progressive law far outpacing the much more gradual and uneven social mobilisation and changes in ground realities. For it is now the gram sabha or assembly of all adult village residents, which is sought in policy documents and law to become the ultimate repository of power over development decision-making. This is now, at least in law, the overarching institution exercising power, over the local bureaucracy, over the management of natural resources and even over the local dispensing of justice.

This legislative empowerment of the gram sabha in India is a political development of utmost importance because it marks the clearest break from the most dominant political orthodoxy of this century, to which we referred at the outset of this chapter. This belief is that people cannot exercise political power directly, that the power of ordinary people must be mediated by institutions that act on behalf of the people. The gram sabha is the first modern political institution, certainly in India and with a few small exceptions possibly in the world, which seeks to place direct political power in the hands of the people, without the mediation of elected representatives (or vanguard ideologically

driven political parties). It represents, at least conceptually, a watershed movement from representative to participatory democracy.

Of course, ground realities are more complex than the neat dichotomy that the preceding paragraphs seem to posit between 'representative' and 'participatory' democracy. Any democracy needs both representation and participation. In India, there is an urgent need for a revival of democracy at all levels, and in particular for democracy to be more participatory at all levels, not just at the village level. Also, democracy inescapably requires a balance between the different levels. In short, gram sabhas represent only one form of more participatory democracy at the village level, it is an 'alternative' to representative democracy. Instead, it strengthens democracy by deepening participation at the local level, and making local representatives more accountable.

## Gram Sabhas, Direct Democracy and Good Governance

This incipient flowering of faith in direct democracy and the gram sabha is closely linked to notions of 'good governance', which are occupying significant space in the research agendas of international development and aid organisations. This recent burst of concern in the international agenda with good governance is driven significantly by the aspirations of trans-national corporations negotiating a globalised world for a more predictable playing field when dealing with governments of the South. Transparency International's annual ranking of countries on the basis of corruption is based on the experience of corruption, not of the citizens, even less the poor of the country, but of corporates.

It is important to rescue the idea of good governance from the perspective of the people, and particularly the poor, because the systems and policies of governance can critically alter the outcomes of their struggles for survival and a better life. This is the subject of a much larger investigation, which is beyond the scope of this chapter. Here we would attempt in a preliminary way to break down or 'unpack' the concept of good governance, hypothetically from the specific perspective of the rural poor. Good governance, viewed from

this particular perspective, may be expected to also include the following elements:

- Responsiveness, implying that the needs, demands, grievances and aspirations of the people, especially of disadvantaged groups, are sought to be responded to in decision-making
- ◆ Probity, implying financial and programmatic integrity
- Accountability, meaning that people would be empowered to question the legality, justice and appropriateness of both the processes and outcomes of decision-making
- Responsibility, implying the ability to take decisions which may be less populist but in the longer term serve the interest of the community (such as with regard to the sustainable use of natural resources).

It is important to recognise that this faith in the gram sabha is based on several extremely important but largely untested assumptions, related both to good governance and equity. The first assumption is that the collective of the gram sabha would be a more reliable vehicle of good governance, than a relatively unencumbered bureaucracy or local elected representatives. The assumption then is that a relatively untrammelled bureaucracy, or even one controlled by local elected representatives, is not a reliable vehicle for good governance. Good governance, in the terms indicated above, meaning honest, transparent, pro-poor and non-populist governance, is best assured if the bureaucracy and elected representatives are directly and continuously accountable to the people.

Many analysts and progressive policymakers in India implicitly believe this to be the case, as we have already observed. They believe further that a system which would best enable direct and continuous control by the people over the bureaucracy and elected representatives, at the local rural level, would be through the mediation of the statutory institution of self-governance, the gram sabha.<sup>7</sup>

It is assumed secondly that even in a village society with deep schisms of caste, class and gender, an organic community still exists, and that given appropriate legal and institutional spaces, it can act cogently and responsibly as a community. This assumption does not necessarily imply a denial or devaluation of the strength of vertical divisions of caste, class and gender in rural society, in the way that Gandhi is accused with some justice of trying to do. Instead, even while acknowledging these schisms, it is believed that the objective conditions of the poor can improve only if the poor are directly involved in the processes of formulation and implementation of decisions affecting their lives. In the exercise of direct democracy, in the small face-to-face localised legally empowered collective of the gram sahba, it is expected that the poor would be best able to organise themselves and acquire voice and strength.8

The validity of these assumptions will be much more fully tested only with the future unfolding of the actual functioning of legally empowered gram sabhas in various parts of the Indian countryside, although some support is available from the success of community-based development initiatives referred to earlier. However, first it is important to understand the exact nature of the legal empowerment for direct democracy of gram sabhas in India by recent legislation in various states of India. This chapter will attempt to document and analyse the unique legal spaces created for direct democracy and self-governance by rural communities through the legislative empowerment of the gram sabha.

These spaces have been created by recent constitutional amendments and supporting central and state legislation, which this chapter will attempt to summarise and analyse. Since most state governments have passed separate and vastly differing legislation with regard to gram sabhas, this chapter would for illustration mostly restrict itself to the relevant laws, rules and administrative instructions passed by seven state governments, namely Kerala, Karnataka, Andhra Pradesh, Madhya Pradesh, Maharashtra, Rajasthan and West Bengal.

## Legal Imperative for the Gram Sabha

The gram sabha has been variously defined as the assembly of all adult residents, or of persons registered in the electoral rolls, of a village panchayat, village or settlement. Since the gram sabha constitutes the

entire electorate to whom all elected representatives in the local bodies, state legislature as well as parliament are accountable, it is believed that the active functioning of the gram sabha could ensure a vibrant democracy. It could enable a great degree of community participation and control, as well as transparency and accountability.

The constitutional imperative to establish a statutorily empowered gram sabha was introduced for the first time by the 73rd Constitutional Amendment in 1993. Prior to this, the Directive Principles of State Policy of the Constitution enjoined that it shall be the endeavour of the state to take steps to strengthen the village panchayats, but it was silent about the gram sabha. In fact, the debates in the Constituent Assembly were marked by a great deal of scepticism about decentralisation to the village level – on grounds which ranged from illiteracy and conservatism to a fear of surrendering to the influence of the feudalistic rural elite (Srivastava 1997).

Nonetheless, the gram sabha has been integral to the Gandhian conception of panchayati raj. Gandhi himself, for instance, held that 'true democracy could not be worked by some men sitting at the top. It had to be worked from below by the people of every village.' More recently, Jayaprakash Narayan advocated direct democracy at the village level, and stated that:

To me (the) gram sabha signifies village democracy. Let us not have only representative government from the village to Delhi. One place, at least let there be direct government, direct democracy.... The relationship between panchayat and gram sabha should be that of Cabinet and Assembly (Jain 1997).

Several social scientists also saw a central role for the gram sabha to not only deliberate but also participate in planning and implementing various programmes. Rajni Kothari for instance wrote:

Representative bodies have their inherent dynamics of power politics and willy-nilly end up vesting effective authority in the politicianbureaucrat nexus. The only way of making this nexus responsible and accountable is to provide larger citizen involvement in new variants of old institutions like the gram sabha which can combine older forms of informal consensus-making mechanisms with the more formal, institutionalised and legal forms decreed by legislation. With the new awakening in the rural areas, these bodies have the potential of overseeing the working of elected bodies and over time with growing confidence that they cannot be brow-beaten by dominant individuals or castes, become a force to reckon with (Kothari 1988).

At the same time, several social scientists cautioned against the idealisation of the so-called village republics.

Despite the absence of any explicit constitutional imperative, the influence of Gandhian ideas ensured that many state governments included the institution of the gram sabha in their respective panchayati raj laws even before the 73rd Constitutional Amendment. However, this commitment was usually symbolic and more to form than substance. A number of studies established that the institution of the gram sabha in all these states was weak and dysfunctional. A Study Team on 'The Position of Gram Sabha in the Panchayat Raj Movement' constituted by the Ministry of Community Development and Cooperation in 1963 and chaired by R R Diwakar held: 'Our experience is that even in those states where the institution of the gram sabha has been introduced by statutes as early as 1947, it cannot be said that the institution has been functioning there in any real sense of the term. Generally, these gram sabha meetings are thinly attended, and a quorum is seldom achieved'.

The Balwant Rai Mehta Committee Report (1957) went beyond a mere delegation of powers and aimed at devolution. It envisaged 'a process whereby the government divests itself completely of certain duties and responsibilities and devolves them on some other authority' who would have 'the entire charge of all development work within it's jurisdiction (Mehta, 1957). Primacy was given to the intermediary tier of the panchayat samiti, and grave doubts about the democratic potentials of the village panchayats were expressed by this report (Srivastava 1997).

Twenty years later, the Asoka Mehta Committee (1978) (Mehta 1978), during the regime of the Janata party, idealised villages as democratic

units of self-government (and perhaps even self-sufficiency) more in line with the Gandhian formulation – but treated village panchayats eventually as delivery systems for ongoing government programmes.

The legal situation altered significantly with the 73rd Constitutional Amendment, which made mandatory the establishment of a gram sabha in each village, to exercise such powers and perform such functions as the legislature of a state may, by law, provide. The gram sabha was thus placed at the centre of the scheme of panchayati raj, giving statutory status to what is perceived as the living and organic community in the village. Scheduled areas (or areas listed in the Constitution for special consideration because of significant tribal populations) were excluded from the requirements of this amendment. Article 243(m) of the Constitution envisaged extending the provisions of panchayats to these areas with suitable adaptations and modifications, and this was done in 1966 through the enactment of the provisions of the Panchayats (Extension to the Scheduled Areas) Act 1996. This Act provided far-reaching powers for gram sabhas situated in Schedule V areas. These extended not only to development planning, implementation and audit, but also included the management of natural resources and the adjudication of justice in accordance with traditions and customs.

By contrast, the 73rd Amendment, which is applicable to all nonscheduled areas, is silent about the actual powers of gram sabhas, and leaves it to state governments to statutorily empower the gram sabha in the manner and to the extent that they deem it fit. Therefore, whereas most state Acts provide for the establishment of the gram sabha, its powers have been restricted and the procedures for the exercise of these powers have mostly not been clearly spelt out in the state statutes and supporting rules.

The 1996 Central Act for gram sabhas in Schedule V areas referred to earlier, which explicitly laid down an extensive and powerful mandate for gram sabhas, could have provided a model for subsequent legislation for empowering gram sabhas even outside Schedule V areas. However, it is only a 1999 Amendment passed by the Madhya Pradesh legislature, which boldly extends most powers

prescribed for Schedule V gram sabhas to all gram sabhas in the state. We shall return in detail to the issue of powers of gram sabha in a subsequent section.

In summary, whereas the 73rd Constitutional Amendment created a legal imperative for the establishment of gram sabhas, most state governments have neither given these institutions of direct democracy a clear and powerful mandate, nor have they defined clear procedures for the conduct of gram sabha meetings. Therefore, with some notable exceptions, which we shall note presently, the institution remains anemic and largely symbolic in most parts of the country, despite the constitutional imperative.

#### Procedures of the Gram Sabha

There has been a fair degree of preoccupation in all relevant laws, and in some of the literature, with the procedures that a functioning gram sabha would, or ideally should follow. It may appear that this concern with procedures is bureaucratic, and it is a matter of expendable detail for political anlysts. However, this is very far from the truth. In the gram sabha, we are witnessing, at a still incipient phase, an institution with hardly any parallels in mature functioning democracies, of a collective directly exercising executive, and sometimes legislative and judicial powers. Unless the procedures for the functioning of such a collective are carefully worked out, the dangers of the hijacking of this institution by the rural power elite, or of their formal functioning only on chapter, remain strong. The procedures prescribed in various laws have to be assessed by precisely these yardsticks.

However, this is not to claim that good laws by themselves guarantee the deepening of democracy. As will be observed throughout this chapter, Madhya Pradesh is an example of a state with progressive legislation on gram sabhas procedures and power. Yet many observers confirm, and this is my experience as well, that the condition of PRIs and gram sabhas in Madhya Pradesh remains infirm, mainly because of the state's extremely feudal social structure and total disempowerment of disadvantaged groups. This illustrates the need

for greater attention to the 'conditions' that will make PRIs and gram sabhas work, other than good legislation, and how these conditions can be brought about.

Before we examine the procedures for the functioning of this institution of direct democracy, it is instructive to begin with reference to a Syndicate Report prepared by Panchayati Raj officials as far back as 1975. I quote extensively from this report.

Experiences of the working of gram sabhas in a number of the states show that the sarpanches convened these meetings under pressure from the higher levels of administration viz. panchayat samiti or the Zilla Parishad. Meetings called were mostly without prior or adequate notice. Despite special efforts, very few panchayats convened the minimum prescribed number of meetings. In most places, only a formality was observed; proxy meetings, at times, were convened and proceedings were written even without the knowledge of those who attended. Meetings, if arranged, either proved to be abortive or unsuccessful because of thin attendance. Participation was rarely wholehearted, seldom with prior consultation with the panchayat or discussion in its meeting. Though the publicity of the date and time of the gram sabha meeting is given through the locally available media but it was never timely or with adequate notice. In some places, the panches were informed and asked to bring along with them as many adult residents of their villages as possible to meet the requirements of quorum. The printed notices or handbills affixed in conspicuous places in the panchayat area mostly failed to catch people's attention.

The participation of women was nominal and conspicuously nil in places where purdah is observed. Thus, even the largely attended meetings of gram sabha extending over a group of villages were not representative of all the sections of the rural society.

No fixed procedure was being observed in the conduct of gram sabha meeting due to the fact that appropriate rules governing the procedure of gram sabha meetings had not been framed. Meetings started without any pre-arranged plan as no agenda was generally prepared in advance.

Gram sabhas were never consulted in planning for the villages of the panchayat area. Since most of the people attending the gram sabha meetings were not aware of their role in the formulation of village plans etc., they attended the meetings generally as silent listeners or critics.

Proceedings of the gram sabha were mostly not recorded properly and never reported to the panchayat or panchayat samiti. There was no follow-up action. (quoted in Jain 1997)

The summary which we have attempted below of various procedural aspects of the gram sabha as prescribed in various state laws, rules and instructions will demonstrate that we have learned little from the mistakes of the past. Therefore, the report of 1975 quoted above could apply to the functioning of gram sabhas in 1999 in most parts of the country. On the ground, with the exception of people's planning in Kerala, the gram sabha has not come into its own in most states of the country. An authoritative survey of Panchayati Raj by the National Institute of Rural Development reports:

'Almost all the state Acts have provided for the gram sabha but its functions and authority have not been spelt out in detail. Consequently, these institutions, by and large, continue to function ineffectively. Though the meetings are generally held as prescribed, the purpose is hardly served in the absence of a clear and direct mandate. More often, there is tendency to conduct the meetings in a formal manner and finalise the proceedings in haste. The prescribed quorum is also not given due importance. Cases were cited where the meetings were conducted without any consideration for the requirement of the quorum. The absence of women folk in the meetings of the gram sabha was a common feature. The participation of people belonging to the weaker sections was also minimal. Only such of the people from these groups participated in the meetings when they were to be identified as beneficiaries under a given scheme. The entire exercise thus becomes formal and incapable of yielding the expected results' (Choudhary and Jain 1999).

There are, however, some state governments which have tried to grapple with the challenge of laying down transparent and realistic procedures for the functioning of rural assemblies, as we shall observe presently. In contrast, other state governments have chosen to persist in leaving the procedural aspects of the gram sabha vague and confused.

We will now consider briefly the comparative legal position with regard to various procedural aspects of the gram sabha in various state Acts and rules.

#### Membership of the Gram Sabha

The first issue is regarding who would qualify for membership in any gram sabha. All state legislation has excluded children, and included all the voters on the electoral roll. The definition of the gram sabha as the entire electorate, to whom all elected representatives in the local bodies, state legislature as well as parliament are accountable, has value because it incorporates the traditional institution of the gram sabha clearly into the overall structure of parliamentary democracy. On the other hand, there is always the possibility that there would be residents who are not listed in the electoral rolls and the chances are that many of these would be the most marginalised persons, who are disenfranchised for a variety of reasons. Persons such as seasonal migrants, nomads, illegal immigrants and homeless destitute, who are excluded from other democratic processes, would also be excluded from the gram sabha. A reference to all adult village residents, rather than voters, may include these excluded sections more effectively.

However, the much more significant differences relate to the administrative unit to which a gram sabha relates. One issue is of viable size; the other is of who lays down the boundaries of a gram sabha, and on what basis.

In most State legislation, the law itself prescribes the boundaries of the gram sabha as being coterminous with some existing administrative unit, whether the panchayat, revenue village, ward or settlement. In India, a revenue village typically comprises a collection of settlements or hamlets. A number of such revenue villages are typically demarcated as a panchayat. In Andhra Pradesh and Karnataka, the gram sabha is defined in relation to a revenue village, whereas in Maharashtra and West Bengal the unit is much larger, coterminous with the village panchayat. In a state like Kerala, the size of a panchayat can range from 10,000–75,000 people. It is obvious that participatory democracy of the kind that is envisaged for a gram

sabha would be impossible for such a populous panchayat. The Kerala Panchayati Raj Act, 1994 therefore, provides for the constitution of gram sabhas separately for every ward (constituency).

However, each of these are units of large and dispersed populations, typically of a few thousand people in several spatially distributed settlements. But several observers have noted that the kind of responsibilities that are now envisaged for the gram sabha require legal recognition for smaller, more organic, face-to-face collectives. It is not realistic to expect that people will walk long distances for meetings which would be deliberating on issues concerning settlements with which one does not have a primary relationship.

Gradually, many states appear to be veering towards a consensus about the greater viability of smaller face-to-face community units, for the exercise of direct democracy. The smallest existing administrative geographical unit is the 'ward'. A ward is the smallest constituency of the local government structure in India, comprising a few hundred people usually in contiguous settlements, who elect a panch or member of the village panchayat. In most states, the smallest statutory institution of direct democracy is the gram sabha, consisting of the persons registered in the electoral rolls relating to the village or the groups of villages comprised within the area of the panchayat.

The Rajasthan government in the year 2000 made a significant advance in enabling direct democracy and the control of rural communities over their lives, by creating a new statutory institution of direct democracy, the 'ward sabha'. We observed that if we were to rely on an existing legal entity, the smallest statutory collective would coincide with the ward. The Rajasthan law acknowledges this, by providing that every ward of the panchayat, would have a ward sabha consisting of all adult persons of the ward in panchayat. The 1999 Amendment in Kerela also gives legal recognition to even smaller units called 'ayalkutams' or neighbourhood groups of around 50 households each.

However, apart from size, the relevant question remains that if we are seeking organic face-to-face communities, it should not be

mandatory that the gram sabha must coincide with a prevailing administrative entity. Instead, it is more logical for it to be what the community itself regards as a community group. The only state in the law seeks to achieve this is Madhya Pradesh. In a recent amendment of 1999, the Madhya Pradesh Act also restricts a gram sabha to a revenue or forest village comprised within the area of the gram panchayat. However, for Schedule V areas (which are predominantly populated by indigenous tribal populations), both the gram sabha and the gram panchayat have been empowered to resolve that even a smaller unit of a hamlet or habitation be recognised as a separate gram sabha. And after due enquiry, such resolution is binding on government. It is important to recognise that many habitations or hamlets may not coincide with any prevailing administrative unit, even the ward. This is a very significant provision, because probably for the first time in any law in India, communities themselves have been in effect given the power to define their membership and boundaries.

## **Convening of Meetings**

The next procedural question relates to which agency has the power to convene meetings, and in particular whether members of the gram sabha themselves are empowered to convene meetings.

In most state acts, apart from the president of the village panchayat, a range of other authorities including the tate government, the District Collector and the district and intermediate level panchayats, have been authorised to convene meetings of the gram sabha. The practice also remains that most state governments, or sometimes the central government, convene statutory meetings of the gram sabha, so they are perceived as being imposed from above.

But in addition, in Madhya Pradesh, the law provides that such meetings can be requisitioned by one-third of the total members of any gram sabha'; in Rajasthan by one-tenth; and similarly in Kerala by 10 per cent, but only 'with items of agenda specified in such request.' The absence of such a clause in other state acts is a surprising, and potentially almost fatal failure, if the gram sabha is to function as a locally rooted, locally energised collective body.

Similarly, in most states, the responsibility to fix the date, time and place of the gram sabha meeting is of the president of the village panchayat. In Andhra Pradesh, this responsibility vests with the secretary. In Karnataka, if the gram panchayat fails to convene the gram sabha as prescribed, the Executive Officer (an official functionary) shall be responsible to convene the gram sabha.

#### Frequency of Meetings

Many state Acts prescribe a minimum number of gram sabha meetings to be held in a year, ranging from one in West Bengal (along with two of the constituency level gram sansad), two in Andhra Pradesh, Maharashtra and Rajasthan and four in Kerala and Madhya Pradesh. The Karnataka Act prescribes that 'subject to the general orders of the government, the Gram Sabha shall meet from time to time but six months shall not intervene between any two meetings.' Maharashtra has an interesting clause to disqualify village presidents who fail to convene the prescribed minimum number of gram sabhas.

However, if gram sabhas are more frequently convened at the initiative of members themselves, it is likely that the frequency of meetings would be quite a lot higher than is statutorily prescribed.

#### Notice

In many villages, one way in which gram sabha meetings are sabotaged by the local elite is by not informing members of a meeting. The meeting is then adjourned or false signatures obtained for its decisions.

Therefore, some state acts or rules prescribe the method by which members of a gram sabha are to be given notice of a gram sabha meeting. In Madhya Pradesh, for instance, a format is prescribed in the rules, and publication of such notice is mandatory at least seven days in advance of a meeting. This would be by affixing a copy of notice at conspicuous places in each village of the gram panchayat area and at the gram panchayat office. In addition, it is mandatory to make the announcement by beat of drum in the gram panchayat areas, which is the traditional rural method for relaying messages. In Kerala, the rules go much further. They require that each household located in the gram sabha be served written notice of each meeting.

#### Quorum

In order to ensure that a tiny, powerful minority does not take gram sabha decisions, most state Acts prescribe a quorum or minimum attendance for the conduct of the gram sabha meeting. In Kerala, the quorum was prescribed earlier in terms of numbers, and a minimum attendance of 50 members was mandatory. A 1999 amendment lays down the quorum as one-tenth of the total membership of a gram sabha, which is also the requirement of the Rajasthan amendment of 2000. No quorum is prescribed in Andhra Pradesh. In West Bengal, the quorum is one-twentieth of the gram sabha membership. Madhya Pradesh prescribes the highest quorum, at one-third.

A small quorum of one-tenth or one-twentieth of the members would still carry the danger that a small male upper-caste landed elite would be present and control the decisions of the gram sabha. Madhya Pradesh ensures some gender equity in participation, with the progressive additional provision requiring that at least one-third of those participating must be women. Rajasthan goes much further to ensure equity in participation. It lays down that among those present in meetings of the ward sabha and gram sabha, in addition to an overall quorum of 10 per cent, it is mandatory for SCs, STs, Backward Classes and women members to be present in proportion to their population in the ward panchayat.

Most state Acts or rules that do prescribe a quorum, however require no quorum when the gram sabha is reconvened. This is an obvious and extremely serious loophole which facilitates the ready bypassing of the gram sabha by panchayat representatives or officials. The Madhya Pradesh rules have one redeeming clause in this connection, that no new items can be discussed in a gram sabha meeting which has been reconvened because of the failure to muster the prescribed quorum. The recent progressive Rajasthan 2000 amendment, deletes the earlier provision that laid down<sup>9</sup> that 'no quorum shall be necessary for a meeting adjourned for want of quorum', and adjourned meetings are subject to the same bindings of quorum as are statutorily required for originally convened meetings.

## President and Secretary

In any collective, a great many set store by who presides over and who acts as the secretary of the collective, and this frequently influences the outcomes of the deliberations. The gram sabha is theoretically expected to hold the village panchayat accountable, and the parallel that is often employed is that the village panchayat is like the cabinet and the gram sabha like the legislature. If this is indeed the relevant model, then it would appear appropriate that the gram sabha be presided over by a person who is not a member of the panchayat.

However, with the exception of Madhya Pradesh, and that also only with reference to Schedule V areas (or areas with a high population of indigenous people), all states prescribe that gram sabha meetings must be presided over by the president. In her/his absence, the meeting would be presided over by the vice-president of the village panchayat. In the absence of both, Maharashtra and Rajasthan provide for the election by the gram sabha members of a president for the meeting from any member of the panchayat who is present, whereas Madhya Pradesh allows the secretary of the gram sabha to preside.

For gram sabhas in Schedule V areas, the relevant rules in Madhya Pradesh prescribe that these must be presided over by a person from the STs who is elected for this purpose by the gram sabha, but who is not an elected member of the village panchayat. This appears a model practice for all gram sabhas.

The secretary is responsible for maintaining the records of the gram sabha. The problem here is largely logistical, because this is typically a paid position, and the expansion of numbers of small collectives through devices like the ward sabha, should not result in the further burgeoning of the rural bureaucracy and place excessive financial burdens on the gram sabhas themselves.

## Making and Recording of Decisions

In rural populations, with many illiterate members, the procedures for recording decisions themselves are often critical to prevent the subversion of the proceedings. The secretary of the gram sabha is responsible for faithfully recording the decisions of the gram sabha. In Madhya Pradesh, the minutes are required to be confirmed by the person presiding over the meeting. On the other hand, in Kerala the minutes have to be read out just before the conclusion of the gram sabha meeting, and approved by the gram sabha members in the meeting itself. Kerala has the highest level of literacy in India, and this device would be even more relevant in regions with low levels of literacy.

Gandhi favoured decisions by consensus in the gram sabha. However, because of high levels of gender, caste and class inequality in most Indian villages, a decision supposedly by consensus would usually represent the interests of the dominant elite. Therefore appropriately, in all states, decisions in the gram sabha are to be taken by the majority of members present and through voting. In some state rules, there is an explicit espousal of consensus as the preferred mode of arriving at decisions in the gram sabha, but even here it is laid down that in the event of failure to arrive at consensus, voting would be resorted to. Madhya Pradesh explicitly provides that such voting would be by show of hands in all cases except while exercising the right to recall. This is a mystifying provision barring secret ballot, and can mainly further disadvantage weaker groups.

#### Powers of the Gram Sabha: An Overview

It may be recalled that we attempted to 'unpack' the concept of good governance from the perspective of the rural poor, and proposed that for them the major features of good governance would include that it is responsive, accountable, honest, transparent, pro-poor and (arguably) non-populist. We had also observed that many, if not most, of the concerns of the poor in relation to governance are local in character.

Since we are considering direct democracy, or the exercise of self-governance by the statutory collective, the gram sabha, it would be appropriate to 'unpack' further the powers of local government, which conceivably can be exercised alternately by the gram sabha. It is our proposal that these may include, most importantly, the following:

+ Powers over development planning and implementation

- Control over local government functionaries and institutions, and elected functionaries
- Monitoring, evaluation and audit of public programme performance and expenditure
- Control over natural resources, mainly land, forest, water and minerals
- Powers to dispense justice, including protection against exploitation and adjudication in disputes.

In our review of state legislation for giving powers to the gram sabha, we will observe that so far it is mainly elements of the first two aspects of local governance that have been delegated to gram sabhas. Even here, the power over development planning and implementation is so far in practice mainly restricted to selecting beneficiaries and items of work in government programmes, and over monitoring to limited but significant powers of social audit.

It is symbolic of the ambivalence in the majority of the political elite to the prospect of genuinely empowered gram sabhas that in the parliamentary debates regarding the 73rd Amendment, the suggestion was made that the word 'functions' should be used instead of 'powers'. In the end, the word 'powers' was retained in the statute, but it was left to the state legislatures to define the precise powers of the gram sabha.

A survey of various State acts indicates certain common features. Firstly, most state acts have made provision in one way or the other for what is somewhat inelegantly described as the 'watchdog' responsibilities of the village assembly, to supervise and monitor the functioning of the village panchayat and government functionaries. In fact, states like Bihar, Goa, Manipur, etc. have specifically mandated the setting up of vigilance committees for this purpose. In most states, the gram sabhas are empowered to examine annual statements of accounts and audit reports. Kerala clarifies the power of enforcing transparency and accountability, by provisions for scrutiny of all ongoing and completed works, confirming the eligibility of beneficiaries and 'knowing the logic

of each and every decision taken by the Gram Panchayat on the Gram Sabha area'.

The second almost universal set of powers of the gram sabha accorded by various state governments through laws, rules or executive instructions, is the power, as already noted, to approve plans and select schemes, beneficiaries and locations specifically in relation to government programmes to be implemented at the village level. This requirement arises at least partly out of the insistence by the Government of India in recent years, often as a condition for the release of its funds, that all works and beneficiaries for schemes sponsored by the Ministry of Rural Development must be approved by the gram sabha.

Apart from these two significant powers, of vigilance and of facilitating people's participation in development decision-making, specifically with regard to government schemes, many state acts contain general exhortations. These do not add in any way to the 'powers' of the gram sabha but are more in the nature of expected duties or functions which do not actually require legal sanction. These include: to mobilise voluntary labour and contributions in kind and cash for the community welfare programmes, render assistance in the implementation of development schemes and services in villages, etc.

There are a few exceptions of some significant additional powers being legislated for gram sabhas in some states. For instance, Andhra Pradesh, Goa and Orissa have given the gram sabha the fiscal power to identify and recommend areas for additional taxation and revenue generation. The 1999 Amendment of Madhya Pradesh goes further than any piece of legislation so far in empowering non-tribal gram sabhas. It has attempted to equip all gram sabhas in the state with a wide range of powers, of the kind that PESA had boldly and creatively provided for gram sabhas only in Schedule V areas. These include:

 To exercise control over institutions and functionaries in social sectors of local government which have been transferred to or appointed by the gram panchayat (such as primary school teachers and health workers, primary schools and sub-health centres)

- ◆ To manage natural resources including land, water, forests and minerals within the area of the village, in accordance with provisions of the Constitution and other relevant laws for the time being in force
- To advise the gram panchayat in the regulation and use of minor water bodies and the awarding of minor mineral leases
- + To impose prohibition
- To be consulted before land acquisition
- ◆ To recall elected members of the village panchayat after they complete half their term (incidentally, this power goes even beyond the Schedule V Act).

However, even in Madhya Pradesh, if we look more carefully at the fine print, the actual nature of these powers as spelt out in administrative instructions, appears to be considerably watered down in contradiction of the letter and spirit of the statute.

The power that state government departments have most resisted letting go has been control over forest management and produce. The new control of forests by gram sabhas required under the amended Madhya Pradesh law, has actually translated itself into merely instructions that revenues from NTFP, may be retained by the state government, except 20 per cent administrative costs. The remainder is to be returned to the actual collectors of NTFP (30 per cent) and to the co-operative of NTFP collectors which would almost overlap with the gram sabha (50 per cent), for financing development works. However, the spirit of the law actually requires a much more fundamental transition, from forests which have from colonial times been tightly managed by the state to community forest management. 11 The latter would have enabled the gram sabha to take all decisions regarding protection and sustainable use of forests in the vicinity of or traditionally accessed by the village residents, but the department has stubbornly refused this.

This is an illustration of the fact that even changes in law do not by themselves necessarily secure legal spaces for the poor particularly when these spaces are fiercely contested, because the bureaucracy retains a lot of power the by interpretation of the law in its administrative instructions. In official debates, the position that is still taken by forest department officials is that people's collectives are not capable of responsible management of forests.

As regards minor water bodies and minor minerals, the village panchayat has been given real powers to grant leases, after consultation with the gram sabha. The advice of the gram sabha is not binding on the gram panchayat, but it would at least ensure some elements of transparency in processes which are otherwise notoriously mired in patronage, nepotism and corruption.

The PESA provides also for powers to the gram sabha for the resolution of disputes according to traditions and customs, but this most vital power of the adjudication has not been operationalised by any state legislature. Nor has this power been extended to gram sabhas in non-Scheduled areas. There are extremely prickly issues involved in the exercise of judicial or quasi-judicial functions by the collective of the village assembly. However, if gram sabhas were envisaged as comprehensive units of self-governance, at some time in the future, it would be necessary to seize the nettle and build legal spaces also for rural communities to have access to alternative community-based institutions for adjudication of justice.

In the shorter run, what may be envisaged is the power of the gram sabha at least over land records, to release the villager from the centuries-old tyranny of the *patwari* or village revenue officer. A beginning in this regard has been made recently in Madhya Pradesh, by placing the patwari and all village land records directly under the gram panchayat. In addition the gram sabha can restore land illegally expropriated by non-tribals from tribal landowners.

It is interesting that the central government has put its weight much more strongly and unambiguously behind the imperative of radical powers being vested in the gram sabha, than state governments. But perhaps this is not surprising because all the powers that the gram sabha may be ultimately expected to exercise are at present enjoyed by various rungs of the state and local governments, not by the central

government. And the former cannot be expected to concede their own disempowerment in favour of people's statutory collectives without a battle, whether fought openly or covertly.

Dissatisfied with the legislation to empower gram sabhas passed by most state governments, in an extremely important and forthright letter dated 19th March, 1999 to all Chief Ministers, the Minister of State for Rural Development, Government of India has stated forcefully:

So long as management of land and other resources and resolution of disputes are not within the competence of the Gram Sabha there can be no real self-governance. It is an indefensible fact that even after 50 years of Independence, an average villager has to depend on some authority or the other outside the village for everything, small or big. What should comprise the minimal package to give self-governance at the village level a real content has to be considered seriously at this juncture in our national life when many an institution at the higher level has been trivialised. Many of them are unable to discharge satisfactorily even their mandatory responsibilities. <sup>12</sup>

He reiterates that a determined beginning has to be made for creating conditions for self-governance in real terms at the village level throughout the country so that people can have a real feel of freedom and manage their affairs as in a true democracy. He suggests that the 1996 Act for Scheduled Areas be treated as a model, and the following minimum package for gram sabhas be considered:

- ▼ Each habitation or a group of habitations may be designated as a 'village' for the purposes of constituting the gram sabha. This alone can enable the people to interact in a face-to-face situation with clear understanding of the issues involved. The gram panchayat may, therefore, have one or more gram sabhas for the area under its jurisdiction.
- ▼ The relationship between the gram sabha and the gram panchayat may be the same as between the legislature and the government. The panchayat should be accountable to the gram sabha in unequivocal terms. The members of the panchayat should hold office only so long as they enjoy the confidence of the gram sabha.
- ▼ The gram sabha should have full powers for determining the priorities for various programmes in the village and approval of

budget. Prior approval of (the) gram sabha should be made mandatory for taking up any programme in the village. Certification of expenditure and also about propriety in financial dealings should be made (the) mandatory responsibility of the gram sabha.

- The management of natural resources including land, water and forest by any authority whatsoever should be made subject to the concurrence of the gram sabha. In particular consultation with the gram sabha should be made mandatory before acquisition of land for public purpose and other forms of land transfer.
- ▼ The gram sabha should be vested with full authority to manage all affairs concerning intoxicants including their manufacture, sale, transport and consumption and also enforcement of total prohibition, if the gram sabha so desires.
- Participation of women, SC and ST members in the gram sabha should be made mandatory with suitable provision for their presence in the quorum of gram sabha meetings.
- ▼ The gram sabha should have the power to evolve its own procedure for conducting its business including decision-making following the principles of natural justice. The rules and regulations which may be issued by the government in this regard from time to time should be deemed to be guidelines. 15

Whether this powerful mandate would be heeded and the various state governments take steps to make it a reality remains to be seen. However, for the present, even the significant powers of the gram sabha over development planning and social audit, which as we have noted has been acknowledged in most state statutes, have typically not been translated into reality through relevant administrative edicts. The equivocal commitment of the executive to decentralise is indicated by the fact that it is only a few states which have actualised these powers, by ways that we shall see in the subsequent sections of this chapter.

## Gram Sabhas and Development Planning

The exercise of power over development planning and social audit requires much more than mere acknowledgement in the law. It requires the convergence of enormous and path-breaking political,

social and administrative action to make the exercise of such power by gram sabhas a vibrant reality.

Whereas most state governments have passed laws or instructions giving the gram sabha powers of planning development works at the village level, rarely has this extended beyond the approval of beneficiaries and works for government rural development programmes. Procedural lacunae and absence of political and administrative will have ensured that even these instructions are frequently breached.

The major contrast to this countrywide experience is that of the government and people of Kerala. What most galvanised the gram sabhas in Kerala was the historic decision of the Marxist state government to earmark 35–40 per cent of the state plan outlay as untied funds for projects planned by local bodies. Of this, as much as 70 per cent was earmarked for the village panchayat.

However, even this by itself was not enough. In the first phase of the experiment, the experience was in fact not much different from that in most other parts of the country. Mostly gram sabhas were not consulted, no projects were prepared, and in the majority of cases the substantial funds were divided equally between ward members for works selected by them, the majority of which were roads. It became clear that even the earmarking of such significant and unprecedented sums (a village panchayat of around 25,000 persons had an annual plan budget totalling around Rs15 million) would not succeed without a major process of mobilising and capacity-building of the members of gram sabhas.

Identification of the felt needs of the people became the first step in Kerala in the decentralised planning exercise. It was accomplished by convening the gram sabhas and ensuring maximum participation of people, especially women and other disadvantaged sections of the society, in order to discuss local development problems. In the urban areas, ward conventions were organised for the purpose. As part of the effort to ensure maximum participation, the gram sabhas were convened on holidays; squads of volunteers visited households and

explained the programme; preparatory meetings of mass organisations were held; and an active propaganda campaign using posters, advertisements, and involving all branches of the media was resorted to. It is estimated that around three million persons participated in these gram sabhas/ward conventions and of the participants about 27 per cent were women.<sup>15</sup>

The discussions in the gram sabhas were organised in groups of 25–50 persons each, one for each development sector which had been identified for people's planning, in addition to one group for SC/ST development and one for women's development. Given the large size of gram sabhas in the state, the organisation of sector-wise group discussions made it possible for large numbers of people to participate in the deliberations in a meaningful manner. Around 1,00,000 resource persons at the local level were mobilised and given training to act as facilitators in the discussion groups. A semi-structured questionnaire was also distributed to help the flow of discussions.

The major gains in the success of the special gram sabha meetings were:

- → The felt needs, priorities and development perceptions of the people in every locality were listed
- ◆ A general awareness was created among various sections of people regarding the decentralisation programme
- + The basic organisational structure of the campaign was laid. 16

The needs assessment collected from the gram sabha was the raw material used by the gram panchayat, through a complex filtering and processing by volunteer task forces and development seminars, into projects that adhered to the technical standards and norms of the District Planning Board. The Board ensured compliance with instructions of the state government, such as that expenditure on infrastructure programmes cannot exceed 40 per cent, on productive programmes like agriculture, afforestation and small scale industries cannot be less than 40 per cent, and that the rest be spent on social sector schemes.

The kinds of priorities that gram sabhas have selected are instructive. To take only one example, programmes related to public health (health care, drinking water and nutrition) have received as much as 12.34 per cent of the funds allocated to people's plan in the state. In several gram panchayats that I visited, gram sabhas have chosen to strengthen the supplementary nutrition programme for pre-school children with daily inputs of milk and eggs at considerable expense. Children received attention in other ways also, such as for schools and sports equipment and training.

What is relevant to note here is that even in a state like Kerala, in which the unit of a village is something of an administrative fiction, and where there is no strong village assembly tradition, it is possible for large numbers of members of gram sabhas to come together and function collectively for the achievement of their major mandate, with energy, responsibility and shared purpose. What is required for this success to be replicated elsewhere is, first, that the powers of the gram sabha be real and substantial (in this case the major chunk of state resources which were placed at the disposal of the gram sabha made all the difference). The imaginative methodologies for mass mobilisation and education and huge volunteer effort were also crucial to the signal success in energising gram sabhas for development planning in Kerala.

The responsibilities of the gram sabha did not end only with providing the raw materials for the village plan. Their responsibilities extended both to implementation and monitoring: two beneficiary committees of volunteers selected by the gram sabha, were responsible to oversee implementation and monitoring respectively.

The major lessons from the Kerala experience in development planning by gram sabhas, is that for this to succeed, we require from the state the following:

- ◆ The political will and wherewithal to create an enabling environment
- Fiscal devolution of a significant proportion of state plan resources and resource mobilisation to the gram sabha

- Functional devolution of the responsibility of development planning to the gram sabha
- Administrative devolution of implementation and monitoring of people's planning.

### Transparency and Powers of Social Audit

As already noted, many state legislatures have legally empowered the gram sabha for social audit. This is an imperative also because the Ministry of Rural Development, Government of India has made such audit mandatory. The PESA lays down that the completion certificate for all village development works can only be accorded by the gram sabha.

In some senses, the power of the gram sabha for social audit is a necessary corollary of, and arguably even more important than, the power of development planning and implementation. The untrammelled power of the development bureaucracy and even elected representatives to implement and monitor these programmes, have led typically to huge leakages and malfeasance and official channels of control and redress have mostly proved ineffective. The power of social audit can potentially enable a despairing and victimised public to rein in corruption.

In Kerala, a major limitation has been that social audit by the gram sabha has not yet been made an integral part of the people's planning process. However, this is considerably mitigated by extremely effective measures to enforce transparency. Reference has already been made to a monitoring committee appointed by the gram sabha for every public work, and this committee cannot be chaired by an elected member.

All plan documents, including those related to beneficiary selection, estimates, bills and vouchers of works have been declared public documents, which any citizen can access. Photocopies are to be supplied for a few on demand within seven days of an application. The state government has decided to install photocopying machines at the headquarters of all the 990 gram panchayats of the state to facilitate this process.

At the site of every public work, it is prescribed that daily a notice be posted which lists the names of workers with wages earned, materials purchased with unit costs, quantities and transport charges, and contingency expenses. Some boards that I saw at random contained even small details of contingent expenditure like telephone charges and refreshments at meetings. (Incidentally, this act of transparency regarding individual wage details also revealed that women workers were being paid less than men, which is illegal, and that all workers are being paid more than the rates prescribed in the JRY manual). The independent monitoring committee of the gram sabha is responsible for ensuring that the notices are accurately prepared and pasted daily. The state government has also prescribed the building of a large notice board at the headquarters of every ward, called the *Vaarta* Board, where these and other notices must compulsorily be posted, otherwise subsequent grants to the panchayat would be withheld.

The method prescribed for the selection of beneficiaries also has salutary elements of transparency. The gram panchayat is required to lay down numerical weightages for priority in selection of beneficiaries. In Kunner Thukal Panchayat, for instance, for award of house sites widows are given a weightage of 10 points, disabled persons and persons with serious chronic illnesses 10 points, for each girl of marriageable age 5 points, each school-going child 2 points, landless workers and farmers with less than 5 decimals of an acre of land 5 points. These criteria would be widely publicised, including on the notice board. Selection by neighbourhood committees and subsequently by the gram sabha would be based strictly on award of points based on the prescribed criteria and objections would be invited before the lists are finalised. This is a good illustration of establishing a system of relative backwardness points, so that there are no restrictions to 'entry' of those who are most disadvantaged.

Such an evolved system of transparency as has been put in place in Kerala is extremely valuable as a device for effectively pre-empting corruption. However, this is still no substitute for a legally sanctioned system of social audit, with mandatory legal outcomes in the event of leakages being detected. This is where the Madhya Pradesh State

government instructions score, at least on chapter, in terms of establishing procedures. Even though Kerala has in fact effected much greater transparency and accountability in practice, this is not adequately backed up by legalised procedures. The instructions of the Madhya Pradesh government prescribe that in the event of the gram sabha reaching a conclusion after enquiry that there have been irregularities in the implementation of any work, it would send a report with full details to the SDO.17 The SDO would be required to register a case in her/his court under the Panchayati Raj Act. The SDO would then constitute an enquiry committee, which would include an elected representative of the panchayat who is not connected with the work, a technical officer and a private individual. The committee would enquire within a time-limit prescribed by the SDO. The SDO would nominate an officer to place the report before the gram sabha. In case the gram sabha concluded that corruption took place, the SDO would be required to take legal action.

This is by no means a fully satisfactory procedure, but it is the only instance in any state, in which the audit of the gram sabha has some mandatory legal outcomes. These outcomes need to be further strengthened, while still maintaining necessary checks and balances.

Despite the issue of these orders in Madhya Pradesh in 1996, they have rarely been used. An interesting contrast is Rajasthan, where a people's organisation MKSS has facilitated pioneering social audit by gram sabhas of a number of public works. However, despite clear evidence of corruption and even admittance of guilt in certain cases, the consistent experience of the organisation has been that the local administration has stubbornly refused to take punitive or remedial action. This failure only underlines the conclusion that social audit by the gram sabha must be backed by mandatory legal outcomes for this to be an effective tool in controlling corruption.

In this regard, once again the Rajasthan Panchayati Raj (Amendment) Act, 2000 vested in the ward sabha, 18 powers which read as follows:

 Getting information on the detailed estimates of works proposed to be taken in the area of the ward sabha

- Exercising social audit in all works implemented in the area of the ward sabha
- ♦ Awarding utilisation and completion certificate for such works.

This section legally empowers local village communities to exercise direct statutory control over the implementation of all works implemented within the ward of which they are members. This is a response to powerful and determined grassroots movements of poor rural communities in Rajasthan for the right to information, and the actual practice of social audit by village communities in what came to be known as *jun sunwais* or public hearings.

The major advance by the Act is that *jun sunwais* in the past relied mainly on moral pressure. The Act now vests them with legal authority, and in fact goes so far as to lay down explicitly that utilisation and completion certificates can only be awarded by ward sabha after the conduct of ward sabhas.

However, it is necessary for the rules to lay down detailed processes for the conduct of social audits, so that its processes conform to the principles of natural justice, and there are necessary and binding legal outcomes of the social audit process. The Ministry of Rural Development, Government of India has already issued detailed instructions for the conduct of social audit. These need to be incorporated in the rules.

The rules would likewise need to be elaborate about the ways in which gram sabhas and ward sabhas would exercise their powers, such as for control over natural resources, land records and government functionaries. For instance, specifically, it has been proposed that the salaries of social sector functionaries should be withheld in the event of their absence from duty, on the recommendation of the gram sabha. The *patwari* should be bound to introduce entries in the land records in accordance with the decisions of the gram sabha.

### Summary

In summary, the 73rd Constitutional Amendment in 1993 for the first time created a statutory imperative for the establishment of legally

empowered gram sabhas in India, although such direct democracy was integral to the Gandhian vision of panchayati raj even earlier. Most state legislatures accordingly provided for the establishment of gram sabhas, but the statutes remained vague and half-hearted about procedures and powers, and in the absence of political mobilisation and awareness about the potential of gram sabhas, they have for the most part remained dysfunctional and unempowered instructions. Most states have statutorily empowered gram sabhas for development planning and social audit. However, it is only in Kerala that a massive devolution of state plan resources to the gram sabha and enormous mobilisation and capacity building have allowed the gram sabhas to realise their potential. Arguably the even more important power of social audit will become a reality only where there are mandatory legal outcomes of the social audit. And full legal empowerment of the gram sabha would also require the detailing of powers for the sustainable management of natural resources, as well as adjudication.

However, whatever its limitations, the law has already opened unprecedented spaces for the exercise of direct democracy by rural communities. There is enormous untapped potential in this for the poor to gain greater control over decisions and processes that critically affect the extremely difficult conditions of their lives. The challenge on the one hand is to push the frontiers of these legal spaces both through enlightened political opinion and pressure from below, in order to persuade the political leadership in various states to vest the gram sabhas with a wider range of powers, for the exercise of direct democracy. On the other hand, the even greater challenge is to facilitate the actual exercise of participatory democracy through creative and resolute use of whatever legal spaces are available, through massive mobilisation, political education and capacity-building.

#### **Endnotes**

 The Marxist-Leninist state which provided the major alternative political model, during the twentieth century challenged the liberal democracy as a 'sham' disguising the dictatorship of the exploiting ruling classes which control the mode of production. It instead calls for an open dictatorship of the working classes. Despite profound differences with liberal democracy, this model also is based on the premise that this dictatorship of the working classes cannot be exercised directly by all members of the working classes, and instead would be exercised on their behalf by the vanguard of the working classes, namely the Communist Party. See for example Fukuyama 1992.

- 2. For a comprehensive history of this issue see Appu (1996).
- 3. For details refer Cheema et al (1983).
- 4. For a detailed discussion of rural development anti-poverty strategies, see Mander's Rural Poverty and State Interventions' (mimeo).
- World Bank 1999.
- 6. DfID 2000. Human Rights for All.
- See Cheema (1983)
- 8. See for example G K Lieten (1996)
- 9. By the proviso clause of section 4 of the Act.
- 10. Although in some cases the shedding of powers by various arms of the state has been so contested that the term 'ceded' rather than delegated to gram sabhas may be more appropriate.
- 11. During the 1990s, in many states of India including Madhya Pradesh, there have been major local successes in joint forest management, a radical innovation that gives some powers and responsibilities for the first time to village forest committees, although central powers are still retained with the forest bureaucracy.
- 12. From MoRD, Government of India
- 13. ibid.
- 14. This is in fact what almost universally happens when panchayat members have powers to select which way funds for government schemes are to be locally spent.
- 15. Economic Review, 1998, Government of Kerala.
- 16. From Economic Review, 1998, Government of Kerala.
- 17. Sub-Divisional Officer, a senior government official who heads the administration of the administrative unit, a sub-division. Each district is sub-divided into a number of sub-divisions.
- 18. Through Section 7 (m) inserted in the Principal Act.

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Chapter 7

# Public Malfeasance and People's Power CORRUPTION AND THE RIGHT TO INFORMATION

From time to time, corruption surfaces briefly in our polity as a central issue engaging and agitating ordinary people. On such occasions, both the context and the catalyst often vary: activism in the media, the judiciary, politics, the civil services or, as is most frequent; in the wider civil society. The ordinary citizen watches with mounting outrage as novel dimensions of corruption in public life come to light each time, confirming once more the malfeasance of those who govern and administer us, in their perilous compromises with public welfare, the control of organised crime and even national security. Each time, the citizen responds with a weary and fragile hope that justice will be done; but before long the dust settles, the guilty are rarely punished, and the citizen returns to struggles of daily survival in what increasingly appears to be an irrevocably corrupt, corroded system.

# PART I: Causes And Control of Corruption In India Definition of Corruption

In a literal sense, the word 'corruption' means to change from good to bad, to debase, to pervert. In the context of public office, the most widely accepted definition of corruption is the misuse of public office, power or authority for private gain. Corruption may involve two (or more) parties; as would be the case for instance in bribery, extortion, nepotism, and speed money. Corruption by public authorities may also be a solitary engagement, as in embezzlement, fraud and the misuse of official facilities.

One problem with this definition of corruption is that it appears to exclude the private sector from its scope. Recent exposures in India

have shown that the rot of corruption runs at least as deep in the private sector as in government, and that the private sector is, in fact, in many cases, a willing partner in government corruption. For example, it has been pointed out that large corporations and even governments in some industrial countries resist reforms to control corruption, because of the belief that illegal payments to officials in less industrialised countries work to their benefit. However, even while acknowledging this, the chapter will limit itself to an examination of corruption by public authorities, particularly in the civil services, in the context of India.

A distinction is sometimes made in literature between petty and grand corruption, according to which petty corruption is based on small kickbacks and follows from the grossly low salaries paid to public servants. On the other hand, grand corruption refers to the huge amounts made by high officials on decisions relating, for instance, to large public contracts.

The distinction is a real one, but there is a danger of using this distinction for rationalising, possibly almost condoning even if only by implication, petty corruption, as being based on need rather than greed. The poor are no doubt hurt by grand corruption, but also in their day-to-day lives they grapple debilitating with petty corruption. It is important that both forms of corruption are examined and confronted together.

A distinction is also sometimes made between legitimate 'gifts' and bribes. Olusegun Obasanjo, a former Nigerian Head of State, has been quoted to say, 'The distinction between gifts and bribes is easily recognisable. A gift can be accepted openly; a bribe has to be kept secret'.

However, this distinction is mostly spurious. Even gifts that do not involve cash transactions involve the same explicit or implicit obligations of reciprocity involved in cash bribes. Therefore, they also constitute corrupt transactions, which may be described as the grey areas of corruption. These grey areas of corruption are, in practice, far more common in India than money transactions, and may include

the acceptance of favours in the form of liquor, loans of cars, travel and hotel hospitality, house rent, placement of relatives in multinational companies and scholarships for foreign universities, etc.

Such non-pecuniary grey area corruption is often packaged to make it appear antiseptic and respectable, both to the recipient and to the general public. The most obvious and literal example of such packaged corruption in India is the ubiquitous *Diwali*<sup>2</sup> gift, which has evolved from boxes of *mithai* and baskets of fruit, to gifts of expensive suit-lengths, foreign liquor and gold and silver. Another notorious, particularly sophisticated form in which corruption is packaged is promoters' quota shares. Its neatness lies in the fact that widespread bribe-taking at the highest levels, especially of those charged with the formulation and implementation of economic policy, can be conducted brazenly in the open, effectively disguised as part of the legitimate right of public servants to trade in stocks and shares.

In many ways, packaged grey area corruption is more dangerous than pecuniary corruption. Not only is it much more difficult to catch, it is also much easier for the recipients of such bribes to rationalise these to their own conscience. Such rationalisations are often ingenious. A young income tax officer in Delhi, for instance, claimed to this writer that since he lived 27 kilometres away from his office in Delhi, coming to work each day by a local bus would tire him out and affect his productivity and his official duties would suffer. Therefore, if a client sent him a car each day to come and go from work, the government was the one to benefit from his higher productivity at work!

There is some resonance in spirit with Obasanjo's rationalisation referred to earlier, according to which consideration anything accepted openly was not a bribe: in other words, if one receives benefits for which one cannot legally be caught, it is not a bribe. Surely, it must be clear that corruption by public authorities cannot be defined in terms of the scale, content (cash or kind), secrecy or openness of a transaction. Instead, any transaction intended to influence the misuse of public office for private benefit is a corrupt

act, even if packaged in a culturally acceptable form, or in a form that would not invite punitive outcomes.

There are many civil servants who make a choice of personal honesty, but refuse to take proactive action to control corruption among their subordinates, in their own offices and in other offices within their jurisdiction. Many refuse to take action when confronted with irrefutable evidence of corruption. The reason for such an attitude is often a fear of the consequences to themselves of rocking the boat in pervasively corrupt waters. A corrupt subordinate is often known to wield more real power than the superior, and can even secure the transfer or harassment of an inconvenient boss. However, it would be evident that ethically there is very little difference between active participation in corrupt practices, and tacit or passive acceptance of it for fear of consequences. Therefore, we include refusal to control corruption within one's official jurisdiction, even while remaining nominally honest personally, within the scope of our definition of corruption.

### **Dynamics of Corruption**

We noted that some forms of corruption could be engaged in on the solitary initiative of the public official, such as leakages, embezzlement and wilful misuse of facilities. On the other hand, corruption in the complex interface of public authorities and the public takes diverse forms. First, there is the phenomenon widely known as 'speed money', in which there is no attempt to influence the outcome of an official decision; the effort instead is to overcome delays. This is possibly the most common dynamic of corruption in public offices, and arises from the unpredictable and uncertain delays that riddle the routine functioning of any office. The client is then encouraged to pay prearranged sums to ensure that a decision is taken on an issue. This is, for instance, common in courts, where the client would be willing to pay even for an adverse decision, to enable recourse to further avenues of relief, in preference to protracted and uncertain delays which result in a stalemate and paralysis of options.

A second dynamic of corruption is what we may term as 'goodwill money'. In such cases, the client pays to influence neither the outcome

nor the speed of specific official decisions. It is instead a regular payment in cash or kind to keep public servants in good humour, in the hope that they would be positively disposed towards the client in the future in the event of decisions affecting the fortunes of the client.

A third category is what we may describe as 'end money'. In such cases, money or favours are offered specifically to influence official decisions in favour of the client. Such bribes are frequently used to obtain contracts and licences, favourable outcomes in courts, and police investigations.<sup>4</sup>

The most diabolical form of corruption is what may be termed 'blackmail money'. Here, the initiative is not taken by the client in any way, either to influence the speed or outcome of any official decision or to invest in goodwill. Instead, it is the official who traps the client into a situation, in which he or she must pay, or else face adverse consequences. Here, the client is an unwilling and hapless partner in corruption, paying only to escape harassment.

# **Causes of Corruption**

Corruption is a symptom of the collapse of the institutions of governance that are supposed to mediate the relationship between citizens and the state. The legitimacy of the state is related to its responsibilities for ensuring that scarce resources are allocated according to principles of justice for development, protection and welfare of the disadvantaged, sustainable management of natural resources, the rule of law, peace and security. Corruption represents the subversion of these responsibilities for the personal enrichment and aggrandisement of public servants.

The causes for this malaise lie both in society, as well as in the character of the bureaucratic machine. The sombre empirical reality of the pervasiveness of corruption in Indian public life today is rooted first and foremost in the social legitimacy that has come to be tacitly accorded to corruption in every sphere. In the relatively idealistic decades just after Independence, corruption did exist but the corrupt official or politician tended to be low-key and defensive, and ostracised if exposed. The situation today is almost the opposite – it is the honest

official or politician who is defensive, viewed as an anachronism, a comic figure or a fool. As all restraint is thrown to the winds, the corrupt have no compunction in flaunting their illegal wealth, grotesquely disproportionate to all legitimate and known sources of income.

Related to this is the burgeoning of consumerist values, fostered by seductive advertising especially on the electronic media, in the permissive environment created by the debunking of constraints imposed in the past by the stated socialist goals of official policy. The salaries of civil servants by no means reduce them to poverty, but at the same time they guarantee no more than a middle-class existence. Some decades ago, there was a willingness to accept this as the cost of a fulfilling and prestigious vocation, but in today's consumerist world we find an unwillingness among civil servants to reconcile to a middle-class standard of living. This sharp imbalance between means and aspirations fuels corruption, especially of the grey and packaged kind.

The opportunities for corrupt practice are further fostered by several systemic factors intrinsic to the character of the bureaucratic machine. These include lack of transparency, accessibility or accountability, a demotivated and untrained staff, cumbersome and confusing procedures, proliferation of mindless controls, and poor commitment at all levels to public welfare outcomes. Moreover, the degree of discretion available to public servants is large, rules and procedures are complex and mystified, poorly defined, poorly disseminated and ever-changing, and accountability is low.

Though the state has spread its tentacles to virtually all aspects of the day-to-day life of the citizen, development and welfare programmes are seen as largesse to be distributed for a price.<sup>6</sup> Critical rights to land, shelter or natural resources are affirmed only when they are recorded by the state. Burgeoning litigation in courts is often greased by speed money, and law enforcement agencies are known to indulge in extortion from the poor.

These problems are further aggravated by the absence of effective professional and social sanctions in the civil services: while systemic rewards are not linked to integrity (sadly often the reverse), the probabilities of detection and punishment remain extremely low. Though, as we shall see, there exist powerful laws in the statutes to control corruption, in practice detection is extremely weak, and even the few cases of malfeasance that are detected are often soft-pedalled and toothless departmental proceedings resorted to instead of deterrent criminal action. Investigation of corruption cases is typically shoddy and lackadaisical in comparison to other offences; often the investigating officer does not understand the details and nuances of the internal workings of the specific department, and valuable evidence is overlooked.

Though the aggressively honest public servant does not usually suffer in the long-run even today, there are often severe setbacks in the short-run that frighten all but the most stout-hearted.<sup>7</sup> At the same time, the corrupt are perceived to enjoy not only a good life but also the symbols of professional success, such as powerful postings and stable tenures, with very little likelihood of being brought to book.

# **Control of Corruption**

In this section, we shall first examine and then attempt to refute arguments against aggressive policing of corruption, and go on to look at internal systemic modes of control of corruption by public authorities. In other words, we will examine whether it is desirable and feasible, and if so, to what extent, for public authorities to combat corruption within public offices by methods such as policing and internal administrative reforms, which do not directly involve civil society.

In literature, as well as in public life, one may encounter arguments that bribes are in effect incentive payments for low-paid officials, and that they provide avenues to escape the burden of unrealistic government regulations, taxes, and laws. In this view, a frontal fight against corruption would result in a collapse of the system, because sullen subordinates would refuse to work in an environment that is efficiently policed against corruption. According to the logic of this line of argument, an active struggle against corruption would in fact be against public welfare because the benefits that clients are receiving

even from a functioning corrupt system would be extinguished if the incentive of corruption is lost.

There are many weaknesses to this strain of reasoning. It presumes, first, that the public receives substantial benefits even from a corrupt public office. It has been pointed out that corruption leads to serious misallocation of resources away from areas of greatest need and thus, social productivity. It also imposes high transaction costs on the client public, thereby, in fact shutting out even the target groups, leading to inefficiency in public expenditure.

A second assumption is that most government employees are motivated primarily by the wish to extort bribes from the client public. However, the experience of those officials like this writer who have attempted to fight corruption frontally, by a variety of measures described below, has been entirely to the contrary. If strict and fair action against corruption is accompanied by motivation of staff, recognition of good work and responsiveness to genuine grievances, employee motivation is found not to decline but in fact greatly blossom among the large majority of the staff. Human nature is not by and large irredeemable. Fighting corruption does not result in the collapse of the system, as is alleged by advocates of a passive policy towards corruption, but instead leads to it becoming much more humanised.

Other fatalists also point out that most anti-corruption campaigns end in failure. It is often the experience, even criminal cases against corruption (leave alone civil proceedings), ultimately fail, either in the course of investigation or in the courts. Of the tiny proportion of cases actually brought to book, an even more microscopic fraction culminate in punishment. An officer of integrity and courage, who confronts corruption at great personal cost, is likely to despair when the corrupt in most cases thus, walk away scot-free. Yet it is important to recognise that even failed efforts at controlling corruption are not futile, because they show that the situation is not hopeless, they counter cynicism, and act as a brake against completely unbridled corruption. Above all, the cumulative effect of such isolated examples is to break public passivity over time. And as we shall see, real solutions lie in the end in organised public action.

There are those who argue that the best solution is not policing but pay reforms to raise salaries, thereby reducing the marginal benefits of bribery. The government may be well advised not so much to raise salaries as to ensure fulfilment of at least middle-class aspirations of civil servants, for housing, transport, telephones and so on, to cushion from temptation at least the less vulnerable among them. However, it has not been demonstrated that higher salaries reliably depress corruption. Highly paid officials are not, as a rule, less corrupt than those paid low salaries.

The reasons for this are not hard to seek, for if we recognise that corruption is related not to one's means but to one's aspirations, there is no guarantee that increased means would necessarily be accompanied by frozen aspirations. The reverse may well be true, because although a civil servant even today can take satisfaction by comparing his or her lot with the large mass of those below, human nature is much more likely to continue comparisons with the lifestyles of those who would always be better off than them in any circumstances. Also, in many developing countries, already as much as 70 per cent or more of gross state revenues are being spent on salaries. It would be unconscionable, and politically costly, to raise the establishment burden on the state exchequer any further. The only way higher salaries would be feasible would be by downsizing bureaucracy. However, with burgeoning unemployment and slow economic growth, government jobs are often the major avenue of new livelihoods for the educated, and typically there is, therefore, little political will for reducing government employment.

It is also often argued that controlling corruption within public offices however desirable theoretically, is virtually impossible to achieve in practice. However, as we shall observe in the remaining part of this section, systemic responses to controlling corruption are feasible, given administrative or political will operating chiefly through the quality of leadership of public authorities, the enforcement of anticorruption laws, and administrative reforms. We shall consider each of these in turn.

# Quality of Administrative Leadership

The internal control of corruption in any public system is critically dependent on the quality of leadership in public authorities. The first step in controlling corruption among subordinates is a clear will on the part of the supervising officer, and one that is equally clearly communicated i.e. not only a clear statement of intent, but also consistent backing by the actions of the manager.

Subordinates also take lessons from the kind of employees official superiors choose for tasks of responsibility. Most frequently, a public manager is forced to choose between corrupt and efficient, or honest and inefficient subordinates. Even for bona fide motives of result achievement, the choice often veers towards the former, but such a choice robs statements of intention to campaign against corruption on the part of the public manager of any credibility.

What is also of paramount importance is the transparent and unimpeachable personal integrity of the manager. In all government offices, there is little about what transpires there that remains hidden from those working in it. Government officials serving in small towns quickly also learn that almost nothing in their private lives is hidden from inquisitive public scrutiny. Officers who choose to launch on a path of aggressive honesty cannot afford to lapse into even tamer forms of grey area corruption, because the inevitable backlash by vested interests affected by a campaign against corruption would render them entirely vulnerable. It is only an officer perceived to be personally incorruptible who can afford to take up cudgels against corruption.

An officer committed to controlling corruption must further be fully accessible to the client public, and must take prompt action in the event of any bona fide and reliable complaint. Any compromise on accessibility could breed corruption among those who filter access to the officer. And unwillingness or delay in acting on complaints of corruption would destroy the credibility and the ability of the officer in gathering intelligence about the sources and dynamics of corruption in his/her jurisdiction.

The social and systemic barriers that militate against the fostering of such leadership in public offices have already been elaborated. However, though such qualities of leadership in public offices are indispensable for the success of any campaign by public authorities for probity, it is important to recognise that such leadership is also more likely to be fostered in an environment of social mobilisation.

## **Enforcement of Anti-Corruption Laws**

If an officer is to be effective in policing corruption, he/she must take decisive action against the biggest sharks, the most powerful offenders, the persons with the greatest potential to create trouble. Usually the choice is just the reverse, to concentrate, if at all, on the smallest and weakest offenders. But this is likely to have little impact on the overall system even after significant expense of energy. On the other hand, effective and high-profile action against a small number of the biggest offenders, would result in a situation in which the smaller offenders would feel constrained to restrict their corrupt activities.

In practice, the few cases of corruption by public authorities that come to light are generally soft-pedalled with departmental action, treating these as breaches of the conduct rules of public servants, rather than as criminal liability. However, there is no dearth of strong legal provisions in India, both under the Indian Penal Code (IPC) and the Prevention of Corruption Act, 1988 (PCA). The IPC makes the following offences by public servants punishable:

- Public servant taking gratification other than legal remuneration in respect of official act (Section 161 IPC)
- Taking gratification by corrupt or illegal means, to influence public servant (Section 162 IPC)
- Taking gratification for exercise of personal influence with public servant (Section 163 of IPC)
- ◆ Abetment of offences by public servant (Section 164 IPC)
- Public servant obtaining valuable thing without consideration from person concerned in proceeding or business transacted by such public servant (Section 165 of IPC).

However, most of these offences are not cognisable in relation to public servants, and the onus of proof is on the prosecution.

The PCA contains many features that strengthen the capacity of the state to prosecute offenders for corruption. These include a wider definition of public servant, provisions to establish special courts, stringent punishment and investigation of offences related to corruption at senior levels. An important provision is the shift of burden of proof to the person accused of holding assets disproportionate to income.

Despite such strong anti-corruption legislation, weak, ambivalent detection, registration, investigation and pursuit in courts leads to poor actual deterrence. In India, the performance of other watchdog institutions like accountants and the press has been extremely patchy.

There is no doubt that strong anti-corruption laws are critical for the control of corruption. However, in a situation in which corruption is 'systemic' and pervasive, where both parties to a bribe benefit, and in which most victims of corruption are politically and economically relatively powerless, it is not surprising that detection and enforcement are so poor.

In the end, political will can be generated only by the organisation of public opinion of the victims of corruption as a political pressure group for the enforcement of anti-corruption laws. We will return to this in the second part of this chapter.

#### **Administrative Reforms**

There are a large number of administrative reforms that can reduce corruption. Reforms that reduce delay, that demystify rules and procedures and promote transparency are of utmost importance. The head of the office may accomplish these in a variety of ways. She/he may identify major arenas of client interface in the office, prepare pamphlets to be distributed free of charge and arrange for notice boards to be placed in conspicuous places, which list with clarity in local language, all relevant rules and procedures. This could include information regarding to whom one should apply, in what format or

application form, rules regarding eligibility, a check-list of documents required, the time limit for application and the authority to be contacted in the event of grievance. Such information should also be actively disseminated through the local press, especially in publications with large rural circulation, in literacy and post-literacy classes, and through camps to both educate rural youth on such information and to motivate them to disseminate it in their villages. The officer can also exercise control, through tours, inspections, and setting and reviewing targets in areas vulnerable to speed money corruption.

Reforms are also required to reduce the stranglehold the state exercises over every aspect of citizen life. Decontrol of mindless regulations would also reduce corruption. While organised industry works today in a regime of dismantled control, little of this liberalisation has filtered down to the small producer in the unorganised sector, who continues to confront the old licencepermit raj, and its festering corruption. Conscious dismantling of controls except where they are genuinely in the public interest, and simplification and transparency where such controls are continued, would be a strong systemic prophylaxis. This should not be regarded as a justification for the retreat of the state. There are many regulations that are vital for equity and public welfare, but these regulations must be enforced with far greater transparency. The sustainable management of natural resources must no longer be the monopoly of the state and control by community institutions like the gram sabha must be established. Development and welfare programmes must not be designed as discretionary largesse to passive populations. Again, their planning and implementation must involve people centrally.

In summary, control of corruption is possible by stricter enforcement of anti-corruption laws, but this requires public vigilance and pressure. In the long run, the answer lies in consciously dismantling areas of state control on citizen lives, drastically reducing discretion, forcing transparency in rules and procedures, and increasing citizen participation in decision making.

# Impact of Corruption on the Poor

There has been a recent surge of international concern with the phenomenon of corruption by public authorities. This new international concern for good governance in countries of the South may be understood at least in part in the context of globalisation, and the aspirations of many actors in the global economic arena for greater predictability in returns from their cross-country investments. A substantial body of the literature, therefore, focuses on the economic costs of corruption.

Gray and Kaufmann (1998), both economists working for the World Bank, summarise the economic impact of corruption as follows:

- + Bribery raises transaction costs and uncertainty in an economy
- → Bribery usually leads to inefficient economic outcomes. It impedes long-term foreign and domestic investment, misallocates talent to rent-seeking activities, and distorts sectoral priorities and technology choices (by, for example, creating incentives to contract for large defence projects rather than rural health clinics specialising in preventive care). It pushes firms underground (outside the formal sector), undercuts the state's ability to raise revenues, and leads to ever-higher tax rates being levied on fewer and fewer taxpayers. This, in turn, reduces the state's ability to provide essential public goods, including the rule of law. A vicious circle of increasing corruption and underground economic activity can result.
- Bribery is unfair. It imposes a regressive tax that falls particularly heavily on trade and service activities undertaken by small enterprises
- + Corruption undermines the state's legitimacy.

Some of these impacts would impinge indirectly on the poor, such as in the misallocation of resources away from the social sectors. However, there are also grave direct impacts on the poor, both from 'grand' and 'petty' corruption.

The major impact of corruption on the poor is firstly through the likely misdirection of public investment in favour of large centralised

and complex projects rather than dispersed, decentralised programmes requiring less state financial resources, to which reference has already been made. However, the reverse may also hold good, if decentralised power structures gain significant political influence, as in India's panchayat system. There may be an incentive then for decentralised, dispersed schemes in which vigilance and detection are weak. In both cases, however, the basic principle is that decision making regarding public investment may be directly influenced much less by considerations of public welfare than by opportunities for corruption.

Corruption in fiscal management and collection also militates against the poorest, because they have less power and influence to evade direct or indirect tax burdens. It may be argued that the really poor are not tax payers, but they disproportionately bear the burden of indirect taxes and of the inflationary impacts of fiscal profligacy. In many ways, the poor actually subsidise the rich.

Further, if goods and services provided by government in the name of development and welfare are, in fact, only available for a price, the distribution of these goods and services would be severely biased against those without the capacity to pay. In theory, these are precisely the people for whose social security these programmes are designed.

There is also irony in the fact that although large industry has been substantially deregulated, small petty producers continue to grapple with mindless controls, very few of which have been dismantled. Deregulation has made almost no impact at the district and village level. One can set up an industry worth billions of rupees in India without any licence today, but a farmer in Uttar Pradesh can neither set up a brick kiln unit, nor a rice shelling plant, nor a cold storage, and cannot even cut a tree standing on his own private field, without bribing several officials. A simple operation of converting prosipis (a shrub that is plentiful in states like Gujarat), which can give employment to thousands of people, requires four different permissions! Thus, the process of liberalisation which has removed the shackles on industrial production in urban areas must

be carried forward to the rural areas so as to widen the base of rural entrepreneurship.

An unrealistic legal and policy structure militates against much of the informal sector in towns and cities. In most parts of India, there are almost no legal means for someone who is very poor to secure legal access to land for shelter or livelihood. Survival and work are, therefore, forced into the outer fringes of illegality, which renders the urban poor constantly vulnerable to extortion by various arms of the regulatory administration.

There is no doubt that corruption, which represents serious distortion of state mechanisms for ensuring equity, development, justice and order, disproportionately burdens the poor. The poor, even without corruption, are greatly disadvantaged in any interface with the state, in the ways outlined above, because of their economic, social and political powerlessness. However, this disadvantage is greatly compounded when state institutions are corroded by corruption.

# PART II: Right to Information and People's Power to Control Corruption

In this part of the chapter, we will argue that the most powerful instrument for sustainably combating corruption by public authorities is the people's right to information, because it directly empowers ordinary citizens to combat state corruption. We will describe in some detail the most important grassroots struggle for the right to information. We then delineate the constitutional history of the right, and attempts made through the courts to breach the culture of secrecy of the executive, and initiatives from persons within the government. We end by describing efforts at the national level to legislate this right.

# Importance of Right to Information to Combat Corruption

In the space of less than a decade, the burgeoning movement for the right to information in India has sought to significantly expand democratic space, and empower the ordinary citizen to exercise far greater control over the corrupt and arbitrary exercise of state power. This movement is based on the premise that information is power, and that the executive at all levels attempts to withhold information

to increase its scope for control, patronage, and the arbitrary, corrupt and unaccountable exercise of power. Therefore, demystification of rules and procedures, complete transparency and proactive dissemination of this relevant information among the public is potentially a very strong safeguard against corruption. Ultimately, the most effective check on corruption would be where the citizen herself/himself has the right to take the initiative to seek information from the state, and thereby to enforce transparency and accountability.

It is in this context that the movement for right to information is so important. A statutory enforceable right to information would be in many ways the most significant reform in public administration in India in the last half century. This is because it would secure for every citizen the enforceable right to question, examine, audit, review and assess government acts and decisions; to ensure that these are consistent with the principles of public interest, probity and justice. It would promote openness, transparency and accountability in administration, by making the government more open to continuing public scrutiny.

Information is the currency that every citizen requires to participate in the life and governance of society. The greater the access of the citizen to information, the greater would be the responsiveness of government to community needs. Alternatively, the greater the restrictions that are placed on its access, the greater the feelings of 'powerlessness' and 'alienation'. Without information, people cannot adequately exercise their rights and responsibilities as citizens or make informed choices.

There are numerous ways in which government information is, at least in theory, already accessible to members of the public. The parliamentary system promotes the transfer of information from government to parliament and the legislatures, and from these to the people. Members of the public can seek information from their elected members. Annual reporting requirements, committee reports, publication of information and administrative law requirements increase the flow of information from government to the citizen. Recent technological advances such as the internet have

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the potential to reduce further the existing gap between those who control information i.e., the government and those who may wish to avail of it.

However, in practice the overall culture of the bureaucracy remains one of secrecy, distance and mystification, not fundamentally different from what it was in colonial times. In fact, this preponderance of bureaucratic secrecy is usually legitimised by a colonial law, the Official Secrets Act, 1923, which makes the disclosure of official information by public servants an offence.

The right to information is expected to improve the quality of decision making by public authorities, in both policy and administrative matters, by removing the unnecessary secrecy surrounding the decision making process. It would keep groups and individuals to be kept informed about the functioning of the decision making process as it affects them, and to know the kinds of criteria that are to be applied by government agencies in making these decisions. It is hoped that this would enhance the quality of participatory political democracy by giving all citizens further opportunity to participate in a more full and informed way in the political process. By securing access to relevant information and knowledge, the citizens would be enabled to assess government performance and to participate in and influence the process of government decision making and policy formulation on any issue of concern to them.

The cumulative impact of the availability of such information to the citizen, on control of corruption and the arbitrary exercise of power, would be momentous. Those advocating legislation to guarantee the right to information envisage not only the availability of such information on demand from public authorities, but also compulsory disclosure and dissemination of some categories of information by public authorities even without public demand for such information. This responsibility for the suo moto release of certain categories of information is critical for enforcing transparency and enabling citizens to counter corruption that they experience in their daily lives. These categories are based on the draft legislation prepared by the National Campaign for the People's Right to Information (1999).

# Right to Information: The Grassroots Struggle in Rajasthan

The most important feature that distinguishes the movement for the people's right to information in India from that in most other countries, whether of the North or the South, is that it is deeply rooted in the struggles and concerns for survival and justice of the most disadvantaged of rural people. The reason for this special character is that it was inspired by a highly courageous, resolute, and ethically consistent grassroots struggle related to the most fundamental livelihood and justice concerns of the rural poor. This struggle in the northern desert state of Rajasthan was led by the Mazdoor Kisan Shakti Sangathan (MKSS), as part of a people's movement for justice in wages, livelihoods and land.

In this section, we will recount in some detail the story of the MKSS, because it would enable a deeper understanding of why the movement for the people's right to information in India has developed as part of a larger movement for people's empowerment and justice.

It was in the summer of 1987 that the three founding activists of MKSS chose a hut in a small and impoverished Rajasthani village, Devdungri, as their base to share the life and struggles of the rural poor. The oldest member of the group was Aruna Roy, who had resigned from the elite Indian Administrative Service (IAS) over a decade earlier. She had worked in a pioneer developmental NGO, the Social Work and Research Centre, Tilonia, and had gained important grassroots experience and contact with rural people, but now sought work which went beyond the delivery of services to greater empowerment of the poor. She was accompanied by Shankar Singh, a resident of a village not far from Devdungri, whose talent was in rural communication with a rare sense of humour and irony. He drifted through 17 jobs - working mostly with his hands or his wits in a range of small factories and establishments - before he reached Tilonia, to help establish its rural communication unit. With him, was his wife Anshi and three small children. The third activist of the group was Nikhil Dey, a young man who abandoned his studies in the US in search for meaningful rural social activism.

Together they had come to the village Devdungri, with only a general idea of the goal of their work, to build an organisation for the rural poor. They were much clearer about what they did not want to do: they would not accept funding or set up the conventional institutional structures of buildings and vehicles common to most NGOs; they would not set up the usual delivery systems of services; they would accept not more than minimum wages for unskilled labour, and this too they would derive mainly from small research projects and assistance from friends; they would not accept international or government funding for their work; and they would not live with facilities superior to those accessible to the ordinary small farmer of the surrounding countryside.

They lived in a hut no different from that inhabited by the poor of the village, with no electricity or running water, and they ate the same sparse food of thick, coarse grain *rotis* as the working class villager. They had no vehicle, and used trucks and buses for transport. They continue to live in this way even today.

The region which they had chosen for their life and work was environmentally degraded and chronically drought prone. The landholdings were too small to be viable even if the rains came. There were few alternate sources of rural livelihood, and distress migration in the lean summer months was high. Government interventions mainly took the form of famine relief works, like construction of roads and tanks, with extremely high levels of corruption and poor durability. Wages, even on government relief works, were low and payment too erratic to provide any real social security cover. Literacy levels were abysmally low, especially for women (1.4 per cent) but also for men (26 per cent). The average debt burden, at over Rs3,200 per household, was colossal.

In their initial years, the MKSS got drawn in as partner in local struggles of the poor, relating mainly to land and wages, but also to women's rights, prices and sectarian violence. On May Day, 1990, the organisation was formally registered under the name Mazdoor Kisan Shakti Sangathan. Its ranks grew as MKSS built a strong cadre drawn from marginal peasants and landless workers, mainly from

the lower socio-economic groupings. Locally the organisation gained recognition for its uncompromising but non-violent resistance to injustice, such as an epic struggle to secure the payment of minimum wages to landless farm workers, and also for the integrity and ethical consistency of the lifestyles and the means adopted by its activists.

In the winter of 1994, their work entered a new phase, breaking new ground with experiments in fighting corruption through the methodology of *jan sunwais* (public hearings). This experiment, despite its local character, has had state-wide reverberations and has shaken the very foundations of the traditional monopoly, arbitrariness and corruption of the state bureaucracy. In fact, the movement contains the seeds for growth of a highly significant new dimension to empowerment of the poor, and the momentous enlargement of their space and strength in relation to structures of the state.

As with most great ideas, the concept and methodology of public hearings or *jan sunwais* fashioned by the MKSS is disarmingly simple. For years, indeed centuries, the people have been, in their daily lives, habitual victims of an unremitting tradition of acts of corruption by state authorities – graft, extortion, nepotism, arbitrariness, to name only a few – but have mostly been silent sufferers trapped in settled despair and cynicism. From time to time, courageous individuals – political leaders, officials, social activists – have attempted to fight this scourge and bring relief to the people. But in most such efforts, the role of the people who are victims of such corruption has mostly been passive, without participation or hope. Such campaigns for the most part have arisen out of sudden public anger at an event and either died down as suddenly or been sustained through critical dependence on a charismatic leadership. Consequently, the results of such campaigns against corruption have been temporary and unsustainable.

The mode of public hearings initiated by MKSS, by contrast, commences with the premise of the fundamental right of people to information about all acts and decisions of the state apparatus. In the specific context of development and relief public works, with which MKSS had been deeply involved for so many years, this right to information translates itself into a demand that copies of all

These are then read out and explained to the people, in open public meetings. The people have thus, gained unprecedented access to information about, for instance, whose names were listed as workers in the muster rolls, the amounts of money stated to have been paid to them as wages, the details of various materials claimed to have been used in the construction, and so on. They have learnt that a large number of persons, some long dead or migrated or non-existent, were listed as workers and shown to be paid wages which were siphoned away, that as many bags of cement were said to have been used in the 'repair' of a primary school building as would be adequate for a new building, and innumerable other such stunning facets of the duplicity and fraud of the local officials and elected representatives.

It is not as if they were unaware in the past that muster rolls are forged, that records are fudged, that materials are misappropriated, and so on. But these were general fears and doubts, and in the absence of access to hard facts and evidence, they were unable to take any preventive or remedial action. The public hearings dramatically changed this, and ordinary people spoke out fearlessly and gave convincing evidence against corruption, and public officials were invited to defend themselves.

It is interesting and educative to see how officials and public representatives at various levels of the hierarchy have reacted to this unprecedented movement for people's empowerment. For a public hearing organised in 1998, for instance, the head of the district administration, known as the Collector, initially acceded to the demands of the MKSS activists, and issued instructions for copies of the muster rolls, bills and vouchers to be given to the activists. The village development officers however refused to comply with the written instructions of the Collector, and went on strike against the Collector's order, insisting that they would submit themselves to an

audit only by government, and that they would refuse to share copies of documents with any non-officials. The agitation spread to the entire state of Rajasthan.

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The village panchayat elections were then in progress and the Collector requested the withholding of the documents until the elections were over so that the village officials' strike did not obstruct the election process. MKSS organised the public hearing in the absence of documents, but was still able to gather evidence for prima facie cases of corruption in works and delays in payment. These were presented to the Collector, who promised an enquiry.

In compliance with this assurance, the official arrived at village Bagmal for an enquiry. The villagers had gathered, and the official commenced his examination in an open space under the shade of a tree. However, 24 sarpanches or elected village heads of surrounding villages who had nothing to do with the enquiry in progress, arrived at the spot and raised an uproar. A woman sarpanch tore the shirt off a villager giving evidence. The official remained silent, but shifted his enquiry indoors. Threats and assaults on the villagers and activists continued subsequently.

It is significant that the local administration in the four districts in which public hearings were organised by MKSS refused to register criminal cases or institute recovery proceedings against the officials and elected representatives against whom incontrovertible evidence of corruption had been gathered in the course of the public hearings and their follow-up.

Notwithstanding such roadblocks, the enormous significance of this struggle has been its fundamental premise that ordinary people should not be condemned to remain dependent on the chance good fortune of an honest and courageous official, or political or social leader, to release them from the oppressive stranglehold of corruption. The people must be empowered to control and fight corruption directly. For this, firstly they require a cast-iron right to information. Concretely, this means that the citizen must have the right to obtain documents such as bills, vouchers and muster rolls, connected with expenditures on all local development works.

The public hearings organised by MKSS evoked widespread hope among the underprivileged people locally, as well as among progressive elements within and outside government. In October, 1995, the Lal Bahadur Shastri National Academy of Administration, Mussoorie, which is responsible for training all senior civil service recruits, took the unusual step of organising a national workshop of officials and activists to focus attention on the right to information.

Meanwhile, responding to the public opinion that coalesced around the issue, the Chief Minister of Rajasthan on 5 April, 1995 announced in the state legislature that his government would be the first in the country to confer on every citizen the right to obtain for a fee photocopies of all official documents related to local development works.

However, a full year later, this assurance to the legislature was not followed up by any administrative order. This lapse of faith was presumably under pressure both from elected representatives and officials connected with such works, who regard as their birthright the illegal siphoning off of major portions of such expenditure.

Exactly one year after the aborted assurance of the Chief Minister, and coinciding with an election campaign, shrill in its hypocrisy regarding corruption, the MKSS decided to launch a *dharna* at a small town called Beawar. The demand was to press for the issue of administrative orders to enforce the right of ordinary citizens to information regarding local development expenditure.

The state government responded by issuing an order on the first day of the dharna, allowing citizens the right to inspect such documents for a fee, but not to obtain certified copies or photocopies. The MKSS rejected this order as toothless and diversionary, because in the absence of a legally valid copy, no action such as filing a police case can be undertaken by a citizen who detects defalcation. Further, no time limits and penalties were prescribed for compliance or noncompliance, respectively, with these orders.

In order to press for a more cast-iron government circular, the MKSS continued its dharna. A delegation met the Chief Minister during an

election meeting at the village Jawaja, and he verbally conceded to the demand but refused to issue written instructions until the elections were over. The stalemate continued.

Each day since the launching of the dharna, meanwhile, witnessed an unprecedented upsurge of homespun idealism in the small town of Beawar and the surrounding countryside. Donations in cash and kind poured in daily from the local people, including vegetables and milk from small vendors, sacks of wheat from farmers in surrounding villages, tents, voluntary services of cooking, and cash donations from even the poorest.

Even more significant was the daily assembly of over 500 people in the heat of the tent, listening to speeches and joining in for slogans, songs and rallies. Active support cut across all class and political barriers. From rich shopkeepers and professionals to daily wage labourers, and across the political spectrum, from the right-wing fringe to communist trade unions all extended vocal and enthusiastic support.

Speaking at random to people both in the dharna and in the shops and streets of the crowded and dusty marketplace, we found surprisingly high awareness of the issues involved. "Why cannot the government give us information regarding expenditures made in our name?" passionately demanded a waiter in a tea-stall. "It is a fight for justice for the poor," affirmed the owner of a pavement shop selling rubber footwear. Everyone we spoke to was unanimous that there was no other agitation since Independence to which women and men from all backgrounds extended such unstinted support and in which they saw so much hope. They praised the MKSS activists for their discipline, courtesy, the simplicity of their lifestyles, their lack of political ambitions and the authenticity of their motives.

The dharna continued without resolution, but with continuously growing and manifest public support, overshadowing locally the more familiar drama associated with the rough and tumble of the election schedule. Behind the scenes, intermediaries and sympathisers including some from within the government attempted to re-establish dialogue between the activists and government and reach a compromise.

However, no assurance from the government was forthcoming, and therefore after completion of polling on May 2, 1996, the dharna in Beawar not only continued but also spread to the state capital of Jaipur. In Jaipur, in an unprecedented gesture, over 70 people's organisations and several respected citizens came forward to extend support to the MKSS demand. The mainstream press was also openly sympathetic.

In the end, an official press-note was issued in Jaipur on May 14, 1996 on behalf of the Rajasthan State government. It stated firstly that the state government had taken a decision on the issue not because of the pressure of people's organisations, but because of the government's own commitment to transparency and controlling corruption. It went on to announce the establishment of a committee which within two months would work out the logistics to give practical shape to the assurance made by the Chief Minister to the legislature, regarding making available photocopies of documents relating to local development works.

The MKSS and other people's organisations who were involved in the struggle decided to take this assurance of the state government at face value and call off the dharna. It was a highly significant victory, even if reluctantly conceded, in the ongoing movement for people's empowerment. But clearly several battles remained to be fought before the state would concede genuine accountability to the poor.

Another year passed and despite repeated meetings with the Chief Minister and senior cabinet members and state officials, no order was issued and shared with the activists, although again there were repeated assurances. In the end, on a hot summer morning in May 1997, began another epic dharna, this time in Jaipur, close to the State Secretariat. The struggle saw the same outpourings of public support as had been seen in Beawar a year earlier.

At the end of 52 days of the dharna, the Deputy Chief Minister made the astonishing announcement that the state government had already notified the right to receive photocopies of documents related to panchayat six months earlier. Why an order, ironically related to transparency, had been kept a secret, even during the 52-day dharna, remained a mystery.

Nevertheless, the order of the state government was welcomed as a major milestone, because for the first time, it recognised the legal entitlement of ordinary citizens to obtain copies of governmentheld documents.

The MKSS and other organisations set about organising people to use this important entitlement. However, they continued to face in a majority of cases an obstinate bureaucracy and recalcitrant local government representatives who still refused to supply copies of documents.

The MKSS responded to such problems by complaints to authorities, from local levels to the state government, highlighting the illegal withholding of information in the press, and organising and mobilising people to mount peaceful democratic agitational pressure on the authorities. To take a case study, the sarpanch or elected head of the village panchayat of Harmara refused to give copies of muster rolls, bills and vouchers for works conducted in his panchayat. The MKSS workers made repeated visits to the sarpanch, and kept a meticulous record of the number of times they unsuccessfully contacted the sarpanch for these documents. At the time of writing, 65 such visits and appeals to the sarpanch had been made, but with very limited success. After a while, the sarpanch and panchayat secretary stopped visiting the panchayat office altogether.

The MKSS workers then visited his home, but were manhandled and pushed out. The sarpanch followed this up by registering a false complaint with the police against the MKSS workers, who responded with their own police complaint. The Rajasthan State Campaign Committee on Right to Information held a dharna, in collaboration with the state People's Union for Civil Liberties, but the sarpanch remained recalcitrant. Eventually, the MKSS gave notice for a dharna at the sub-divisional headquarters of Kishengarh, with backing from the National Campaign for Right to Information. The sarpanch finally responded with documents for only three works out of the 20 sought,

and these were also incomplete and unreliable with extensive overwriting. The Block Office gave copies of muster rolls for 13 works the night before the dharna, but no bills and vouchers. The Collector ordered a special audit and seizure of the documents, but this was also not implemented.

By contrast, for Kukurkheda panchayat, the MKSS workers demanded documents in a meeting of the village panchayat, but were refused. They complained to superior authorities but without avail. They then mounted agitations, including dharnas and picketing at the office of the sarpanch. He relented within two weeks, and gave documents relating to all works in his panchayat.

# Attempts to Breach the Official Secrets Act11

The battle for appropriate legislation for the right to information has been fought on two main planks. The first is a demand for amendment of the draconian colonial Official Secrets Act of 1923 and the second, which we will look at in the next sub-section, is the campaign for an early and effective law on the right to information.

The Official Secrets Act is a replica of the erstwhile British Official Secrets Act and deals with espionage on the one hand, but has the damaging 'catch all' Section 5, which makes it an offence to part with any information received in the course of official duty, to non-officials.<sup>12</sup>

Objections to this provision have been raised ever since 1948, when the Press Laws Enquiry Committee said that 'the application of the Act must be confined, as the recent Geneva Conference on Freedom of Information has recommended, only to matters which must remain secret in the interests of national security'. This was sound advice which went unheeded and many seminars, academic debates and political promises later (election manifestoes of almost all major political parties have, at least in the last decade been promising transparency and administrative reform)<sup>13</sup> the position has not changed much.

In fact, the Act has been used time and again to suit the purposes of the government. Two infamous cases come to mind in the present context. One was the imposition of the Official Secrets Act to prohibit entry of journalists into an area where massive displacement was taking place due to construction of a large dam, one of the world's largest dams displacing hundreds of thousands, the Sardar Sarovar Project. A strong movement against the construction of the dam has raised many pertinent questions about the nature of development and of survival rights of the marginalised as well as the cost to the environment of such large 'developmental projects'. Public debate and dissent was sought to be suppressed by the use of this law.

Another dramatic instance which has been in the eye of international attention during the last few years is the Bhopal Gas Tragedy, in which leakage of Methyl Isocynate gas from the Union Carbide factory in Bhopal claimed several thousand lives and maimed and handicapped at least the next three generations. Not only did the government refuse to make public details of the monetary settlements between the government and the Union Carbide, but several participants at a workshop on the medical aspects of the victims were arrested under the provisions of the Official Secrets Act.

Both the above instances have, however, been used as active pegs by activists for furthering the cause of right to information. In the case of the Sardar Sarovar Dam, activists discovered that the potential oustees had little or no knowledge of how their lives were going to be affected, no knowledge of the time or extent of displacement, nor any idea of the plans for relocation and rehabilitation. Whenever activists tried to educate people on these issues, the local administration came down heavily on them. Besides using the Official Secrets Act, illegal arrests, false cases and physical threats became the order of the day. Judicial interventions from time to time have become the last recourse activists working in this area.

In the Bhopal gas tragedy case are strong seeds for the demand for mandatory provisions to be made in a law, binding government as well as private companies to give information voluntarily on issues affecting health and environment.

There have been, in the past, several attempts to amend the Official Secrets Act but in the absence of genuine political and administrative will, and popular pressure, all these initiatives have come to nought.

For example, a Working Group was formed by the Government of India in 1977 to look into required amendments to the Official Secrets Act to enable greater dissemination of information to the public. This group recommended that no change was required in the Act as it pertained only to protection of national safety and not to prevention of legitimate release of information to the public. In practice, however, the executive predictably continued to revel in this protective shroud of secrecy using the fig leaf of this Act.

In 1989, yet another committee was set up, which recommended restriction of the areas where governmental information could be withheld, and opening up of all other spheres of information. No legislation followed these recommendations. In 1991, sections of the press<sup>14</sup> reported the recommendations of a task force on the modification of the Official Secrets Act and the enactment of a Freedom of Information Act, but again, no legislative action followed.

The most recent of these exercises has been a Working Group which gave its report in 1997.<sup>15</sup> The Working Group made some recommendations for changes in some statutes that protect secrecy such as the Official Secrets Act and also recommended a draft law. The development of public awareness and interest in the issue of right to information is evident from the fact that this report was much more widely discussed by academia and the media than those in the past. However, this did not alter the fact that this report too seems to have gone into cold storage.

The one point which marks all these exercises and which civil society groups need to be aware of is that these processes contain their own seeds of failure. For instance, in India, none of the above exercises were done openly, rarely were any wide public consultations held on the questions under consideration and neither were the recommendations ever sufficiently publicised. The 1997 Working Group, for instance, consisted of 10 persons, all male, eight of whom were senior bureaucrats from the Central Government. This made the group highly urban-centric as well as government-centric. Practically no consultations were made by the group. The group did not think fit to seek recommendations from any other relevant

groups, whether it be civil society groups, representatives of the rural poor, the media, bar associations, etc. By contrast, the process of drafting South Africa's Open Democracy Bill is one which we would all do well to follow. This Bill is being drafted in consultation with various departments, institutions and persons.

During the present decade, the focus of citizens' groups has shifted from demanding merely an amendment to the Official Secrets Act, to a demand for its outright repeal and replacement by a comprehensive legislation which would make disclosure the duty and secrecy the offence. As we have seen, even a powerful grassroots organisation like the MKSS continues to experience enormous difficulties in securing access to and copies of government documents, despite clear administrative instructions that certified copies of such documents should be available to the citizen on demand. This highlighted to citizens groups the importance of a right to information that is enforceable by law.

# Efforts for a Law for the People's Right to Information

The first major draft legislation on right to information in the country that was widely debated, and generally welcomed, was circulated by the Press Council of India in 1996. Interestingly, this in turn derived significantly from a draft prepared earlier by a meeting of social activists, civil servants and lawyers at the Lal Bahadur Shastri National Academy of Administration, Mussoorie in October, 1995. This is the institute for training all recruits to the elite higher civil services, and it is interesting that serving officials of this institute took the initiative to convene this meeting, which became a kind of a watershed in the national movement for the right to information.

One important feature of the Press Council draft legislation was that it affirmed in its preamble the constitutional position on the right to information, as a natural corollary to the fundamental right to freedom of speech and expression under Article 19(1) of the Constitution. It stated that the legislation merely seeks to make explicit provisions for securing to the citizen this right to information. Incidentally, the view that the right to information flows from the

fundamental right to freedom of speech and expression has earlier been affirmed in a number of Supreme Court rulings, such as the State of UP vs Raj Narain (AIR 1975 SC 865)<sup>16</sup>; Maneka Gandhi vs Union of India (AIR 1978 SC 597); S P Gupta vs Union of India (High Court Judes' transfer case) (AIR 1981 SC 149); and Secretary, Ministry of I and B vs Cricket Association of Bengal and Ors (1995) (2 SCC 161).

The draft legislation affirmed the right of every citizen to information from any public body. Information was defined as any fact relating to the affairs of a public body and included in any of the records relating to its affairs. The right to information included inspection, taking notes and extracts and receiving certified copies of the documents. Significantly, the term 'public body' included not only the state as defined in Article 12 of the Constitution of India for the purposes of enforcing Fundamental Rights. It also incorporated all undertakings and non-statutory authorities, and most significantly a company, corporation, society, trust, firm or a co-operative society, owned or controlled by private individuals and institutions whose activities affect the public interest. In effect, both the corporate sector and NGOs were sought to be brought under the purview of this proposed legislation.

The few restrictions that were placed on the right to information were similar to those under other Fundamental Rights. The draft legislation allowed withholding of information, the disclosure or contents of which 'prejudicially affect the sovereignty and integrity of India; the security of the State and friendly relations with foreign States; public order; investigation of an offence or which leads to incitement to an offence'. This is substantially on the lines of Article 19(2) of the Constitution. Other exemptions were on bona fide grounds of individual privacy and trade and commercial interests.

However, the most significant saving provision was that information that cannot be denied to the parliament or the state legislature shall not be denied to a citizen. This would have been the most powerful defence against wanton withholding of information by public bodies, because the agency withholding information would have to commit

itself to the position that it would withhold the same from parliament or state assemblies as well.

The draft legislation laid down penalties for default, in the form of fines as personal liability on the person responsible for supplying the information. It also provided for appeal to the local civil judiciary against failure or refusal to supply the desired information.

The Government of India then constituted a working group chaired by consumer rights activist H D Shourie to draft a legislation for consideration of the government. This committee, which submitted its report in May 1997, advanced on the Press Council Legislation in one respect, by explicitly bringing the judiciary and legislatures under the purview of the proposed legislation. We have already made reference to the limitations of this committee.

Many of the positive aspects of the Press Council Legislation were excluded or diluted in the Shourie draft. Most importantly, it widened the scope of exclusions to enable public authorities to withhold 'information the disclosure of which would not subserve any public interest'. This single clause broke the back of the entire legislation, because in effect, public authorities would then be empowered to withhold disclosure of incriminating information in the name of public interest. The powerful clause referred to earlier, which provided that only such information that can be denied to parliament or the legislature can be withheld from the citizen, was not included.

The Shourie draft also made no provisions for penalties in the event of default, rendering the right to information toothless. Appeals were allowed to consumer courts. The Act defined public authorities more narrowly to exclude the private sector and all NGOs which are not 'substantially funded or controlled' by government. Some analysts, including the writer, believe that it is the government, which should be made explicitly responsible to provide to the citizen information related to the private sector and NGOs on demand.

However, with the demise in quick succession of two left-leaning United Front governments, this draft also went into cold storage. The right-wing BJP-led alliance also promised a legislation for right

to information in its national agenda, but there has been little open debate about the contents of the proposed legislation.

The new elected government in Rajasthan in 1999 has also declared that it is committed to the passage of a powerful bill for the right to information. It invited the MKSS and the National Campaign for People's Right to Information (NCPRI) to prepare a draft act. The NCPRI and MKSS prepared an initial draft, and then held extensive consultations with citizens groups and concerned individuals at each of the Divisional Headquarters of the state. At the time of writing, the draft was under the active consideration of the state government.<sup>17</sup>

In summary, there is wide consensus among supporters of the right to information campaign that it is of paramount importance that comprehensive and early legislation is passed that guarantees the right to information. Such a law must secure for every citizen the enforceable right to question, examine, audit, review and assess government acts and decisions, to ensure that these are consistent with the principles of public interest, probity and justice. It must bring within its purview the judiciary and legislature, while making government explicitly responsible to supply information related to the corporate sector and NGOs to the citizen on demand. It must also contain powerful provisions for penalties and autonomous appeal mechanisms. Most importantly, the proposed legislation must make disclosure the rule and denial of information the exception, restricted only to genuine considerations of national security and individual privacy, with the highly significant proviso that no information can be denied to the citizen which cannot be denied to parliament and the legislatures. It would then truly be the most significant reform in public administration, legally empowering the citizen for the first time to enforce transparent and accountable governance.

It is difficult to predict whether India is at last on the verge of the passage of a landmark law which would explicitly guarantee the people's right to information. However, an even greater challenge is to continue to anchor the movement and the application of this right in the struggles for survival and justice of the most dispossessed and

wretched of the Indian earth, as an important part of a larger movement for equity and people's empowerment.

### **Endnotes**

- A more elaborate definition of corruption 'as behaviour which deviates from
  the formal rules of conduct governing the actions of someone in a position of
  public authority because of private-regarding motives such as wealth, power
  or status' is discussed by Khan (1996). He also offers a typology of the categories
  and causes of corruption as described in the economic literature.
- Diwali or the festival of lights, widely celebrated in most parts of India, also
  may involve the exchange of gifts. In contemporary India, it has become
  extremely commonplace for business people to distribute expensive gifts on
  Diwali to politicians and officials.
- 3. The hawala scandal led to revelations that senior politicians and even Members of Parliament from almost all major political parties, barring the Left, had received sums of money from the infamous Jain brothers, who were alleged to have been engaged in a massive money-laundering operation. The resulting outry forced many of the accused to resign from the posts they were occupying. Eventually, however the case petered out with many politicians being acquitted of wrongdoing, because the courts found the evidence inadequate. For contemporary accounts of the scam, in its early days, see *The Hindu*, February 23, 1996 and Business Line, February 23, 1996.
- 4. An anecdote may help to illustrate this phenomenon. In what is most likely to be an apocryphal story, a Chief Minister is alleged to have agreed to award a contract on the basis of a promise of a large sum of money. When the file was presented to him proposing the award of the contract, he wrote 'Approved'. When the recipient of the contract subsequently went back on the promised bribe, the file was called back and the word 'Not' added before 'Approved'. The client is believed to have quickly made amends with an even higher amount than what was earlier negotiated. The file was recalled a third time, and this time only the vowel 'e' was added. The order now read ''Note Approved'!
- 5. The Fifth Pay Commission's recommendation has made the overall remuneration package for a variety of governmental functionaries much more attractive, partly to keep up with stratospheric private sector salaries. However it has also fuelled concern about the budgetary burden, particularly with strident calls from other groups, such as university teachers, for matching increases in their remuneration. See for example, Naik (1999).
- 6. Haragopal (1994) argues that in the Indian Context, the bureaucracy has emerged as a ruling rather than a serving class and the administrative culture combines a contempt for its poorer subjects with a hostility to welfare, development and change (1994:314).
- Abraham (1990) documents the case of an Indian Administrative Service (IAS)
  officer Arun Bhatia who has had to face the wrath of the bureaucratic
  establishment for his campaign against corruption. The problems faced by

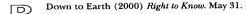
those attempting to fight the system can be judged from the fact that Bhatia was in the news again recently, at the very end of the decade, during a posting in Pune, where a transfer resulting from his challenge to the land mafia was vigorously contested by the local citizenry.

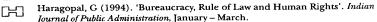
- 8. Khan (1996) in fact presents stylised economic models of this type.
- 9. Palmier (1985) provides a comprehensive (although dated) description of mechanisms instituted to fight corruption and their effectiveness.
- 10. Much of the following discussion is based on Saxena (1996). The interested reader is referred to this monograph for further examples.
- This sub-section is almost entirely based on the research and writing of Abha Joshi of the Commonwealth Human Rights Foundation of India, New Delhi.
- 12. The text of this Act may be found, among other sources, in a 1998 booklet published by the Commonwealth Human Rights Initiative (CHRI), self-explanatorily titled 'Submissions to Legislators on a Right to Information Law'. This booklet is a concise compendium of the legislation, rules and bills proposed regarding information.
- CHRI (1998) provides excerpts from the manifestoes of various political parties, listing commitments on this front.
- 14. The Hindu, 13th December, 1991.
- 15. This 'Working Group on Right to Information and Promotion of Open and transparent Government' to give its complete nomenclature, was set up under the auspices of the Ministry of Personnel, Public Grievances and Pensions, Government of India. The resulting Freedom of Information Bill, 1997 is given in CHRI (1998).
- 16. In this case, the Supreme Court ruled '...The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries...The right to know which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary when secrecy is claimed for transactions which can at any rate have no repercussions on public security' (CHRI 1998).
- 17. In May, 2000, the Rajasthan Legislative Assembly passed a Right to Information Bill, containing as many as 10 categories of restrictions on information despite incorporation of NCPRI's feedback (Down to Earth 2000). However, despite the absence of vigorous movements for right to information, Goa, Tamil Nadu and Madhya Pradesh stole a march over Rajasthan with respect of passage of Right to Information Acts.

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Part Five

Chapter	8	

# Dispossessed People, Strong States and People's Action **CONCLUDING REMARKS**

# Revisiting the Role of the State for Combating Poverty

An article of faith in the neo-liberal 'good governance' agenda is a retreating state. This section will argue that our investigation into public policy for combating poverty and social injustice in contemporary India confirms that strong interventionist states remain critical to the interests of poor and marginalised people.

The state may be defined as a set of institutions with the legitimate powers of coercion and a monopoly over binding rule-making. These powers are exercised over a defined territory and population. Throughout history and across continents, states have variously assumed responsibilities for defence, taxation, resolution of conflicts and providing basic public goods like roads and irrigation.

However, the notion of an overarching powerful, interventionist state for promoting development and welfare is of relatively recent origin. The turning point was the Russian Revolution of 1917, which abolished private property and adopted centralised planning of all economic activities, which was avowedly coercive because of its understanding of the class character of the state. In the imperialist capitalist world, the traumatic decade of the Great Depression exposed, with its cataclysmic burdens of human tragedy, the enormous vulnerability of market economies, and the great human costs that they entailed. This led states to widely adopt counter-cyclical economic policies to revive economic activity and prevent such market failures in the future.

The end of the Second World War saw a number of countries like India emerging from colonial bondage. The aspirations of large The Ripped Chest Concluding Remarks

emancipated populations for economic freedom and prosperity to build on their newly acquired political freedom, led to large popular pressure for active state interventions for equity and growth. In many industrialised countries, the expansion of private wealth was combined with a large consensus for social insurance and welfare benefits to persons excluded for a variety of reasons from the work force. The unrivalled performance of the welfare state in Sweden led the state to grow to nearly twice the size of that in the United States by 1995, in terms of both spending as a share of income and public employment as a share of the population (World Bank 1997: 22).

The global turning point in the evolution of perceptions about the role of the state, once again, was driven by the Soviet Union, but this time in reverse, as centralised state capitalism collapsed ignominiously in the late 1980s. Faith in development and social justice goals delivered by robust centralised states soured, and somewhere along the way, the social justice goals themselves become devalued. Fiscal pressures and political right-wing governments in the North led to a retreat from the consensus on wide-ranging welfare obligations of the state. In many countries of the South, burgeoning, unaccountable, corrupt states failed to deliver sufficiently on their promises of both equity and growth. This is illustrated by the investigation into public policy for combating poverty in independent India in this monograph. Unwise fiscal policies and crippling external debt burdens added to the woes of populations in many countries, who were often caught in the throes of economic crises, runaway inflation and internecine civil wars.

Amidst this pessimism and despair, the ground was fertile for a dramatic transformation in the political economy of states worldwide. Considerations of equity and national economic sovereignty receded, as 'states for globalised markets' became the new mantra. In a world transformed so profoundly – and some would believe irrevocably – in the space of just one decade before the turn of the last century, it may appear incongruous to raise again some fundamental questions about the role of the state, from the perspectives of forgotten people, impoverished, excluded, oppressed. But it is from precisely the

perspective of these women and men, boys and girls that this book aspires to re-evaluate governance, and the role of the state, especially in the context of India.

In an illuminating debate about the appropriate role of the state in the context of liberalisation in India, Dreze and Sen (*ibid*) argue that it is not a question of more or less government, but of the type of governance to have. They stress its role mainly in advancing human capabilities and effective freedoms, not merely as a means to greater economic growth, but because human beings should be valued as ends in themselves, and the advancement of human capabilities should be the objective of social and political organisation. The specific agenda that they recommend<sup>14</sup> includes expansion of basic education, health care and social security, population policy, land reform, local democracy, women's rights, sound environmental policies and a credible legal system.

Our investigation into the impact of state policies to combat poverty and social injustice in India reveals that even in the era in which they were perceived as central to state responsibility and from which governments derived both their legitimacy and popularity, these social assistance programmes could not make an adequate dent on poverty in most countries. At a time when these programmes have been relegated to the periphery of political and economic discourse, and funding has been cut back under the impact of fiscal austerity, they are even less likely to make an impact on poverty.

To actually dismantle the legacies of impoverishment and discrimination, this has firstly to be reclaimed from the periphery to which it has been exiled to become the core of government action in these countries. It may be recalled that in the review of the entire anti-poverty strategy of the Government of India, reference is made to what is described as the sectoral ghettoisation of poverty concerns in government policy. It is assumed that rural poverty is a problem that can be adequately addressed separately from the overall content and thrust of planning and policy. At the heart of the problem is the belief (amongst policymakers) that economic development and

reduction of poverty require two different strategies. It is believed that whereas the former set of policies have to be geared to increase the production and need not take into account the interests of the poor, the latter can be addressed by remedial subsidiary policies of social insurance and social assistance. It concludes that what is needed is the 'mainstreaming of poverty concerns' through overhauling of the policies of all government departments (Saxena 1996: 1–2). This narrow sectoral view of rural poverty is bound to fail in a situation in which the mainstream of government policy is either neutral or in fact damaging to the interests of the poor.

This sectoral ghettoisation of poverty concerns has become even more acute under the impact of the Structural Adjustment Programme (SAP) launched in India in 1991. SAP has two major elements in India:

- ▼ Short-term stabilisation policies for correcting imbalances in the balance of payments through devolution, improving macroeconomic balances through curtailment of government expenditure, monetary liquidity and market liberalisation (eliminating subsidies/price controls)
- ▼ Long-term changes in economic policy (e.g., liberalisation of trade, elimination of protective tariff barriers, privatisation of financial institutions and public enterprises, streamlining of state sector and privatisation of social sector programmes and rationalising the tax system) (Report of the Independent South Asian Commission on Poverty Alleviation 1992: 19).

The study notes several major adverse impacts of stabilisation and adjustment on poor people in India. Many of these difficulties arise from the imperatives of fiscal austerity, which tend to hurt poor people in many ways. It deflates demand, resulting in a lower rate of employment growth'. It directly results in cutbacks on real and relative expenditures on social sectors of health, education, social welfare and anti-poverty programmes; cutbacks on food subsidies would reduce the real income of poor families; restructuring of the public sector and privatisation may lead to increased unemployment in the formal sector; and labour reform would result in reduced wages and job security for industrial workers. The pursuit of SAP despite the diverse negative impacts expected from it underlines the view that in

the perspective of government, poverty is a limited concern to be addressed by targeted technocratic solutions, independent of the overall macr-oeconomic policy.

The investigation in this book also affirms the critical role of direct redistributive measures, which require powerful interventionist state institutions, if poverty is to be overcome. In the context of rural India, land remains the paramount asset and the most powerful source of economic and social well being. The study indicates that landlessness or very small uneconomic holdings characterise the existential reality of most of the rural poor, and land reforms (not only implementation of ceiling laws, but also tenancy reforms, prevention of alienation and expropriation of law from socially vulnerable categories like tribal and dalit communities, ensuring property rights of women, and a range of related measures) continue to have great potential in assisting small and marginal farmers and the rural landless to gain access to land, given the requisite administrative and political will.

Even apart from land reforms, the livelihoods, security and dignity of the poor are also critically linked to their access to a range of other natural resources. These include wastelands, common lands, forests, minerals and water. Any concerted battle against poverty must include as part of its central strategy effective measures for the establishment or restoration of the control of poor rural communities over these critical natural resources for indigenous populations, forests are often an even more life-sustaining resource than agricultural land. Despite recent legislative reform to enhance the access and control of tribal communities to forests, this study has demonstrated that state authorities have stubbornly resisted the transfer of control from the state to communities.

In the context of urban poverty, our investigation has shown that redistributive measures need to focus initially on urban land and town planning policies, which at present completely exclude, both the shelter and livelihoods of poor people. For both urban and rural deprived populations, redistributive measures also need to secure their access to mainstream financial resources. For tribal and dalit populations, redistributive measures have been theoretically built

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into the budgetary process itself, to secure proportionate fiscal spending for the direct benefit of these disadvantaged populations, which is not less than their share in the total population. However, the implementation of such fiscal restributive measures have also been substantially subverted in the process of implementation. As a result, rural dalit settlements are systematically denied access to minimal human facilities. People living in poverty are pushed outside the frontiers of the legal urban economy. The situation is worse for especially vulnerable groups, like destitute and homeless people and those who live by begging, who are discriminated against by laws that criminalise begging and vagrancy. In the rural context, illegalisation occurs primarily through restraints on the legal access of poor people to natural resources like forest and water, which renders illegal livelihoods of many small rural producers.

Some legal entitlements need to be created for securing the rights of poor people. The book argues, for instance, a food-for-work employment guarantee programme for all rural able-bodied persons, to create both food and livelihoods security for all able-bodied people. A necessary complement to this would be social insurance, including a component of food aid, for vulnerable categories of people, deprived both of work and care, like uncared for old people and persons with disabilities.

The book indicates that even equitable laws that positively favour poor people are not sufficient guarantees for securing justice. It identifies measures like legal literacy and mobilisation, legal aid, public interest litigation and a range of measures to reform the law and order machinery, to ensure more effective implementation of pro-poor legislation.

In summary, the investigation of this book into public policy for poor people in contemporary India, identifies a number of core elements which are imperative for effective state action to combat and overcome impoverishment and social injustice. These include the drawing of poverty concerns into the mainstream of public policy rather than relegating them to a subsidiary compartment; strong redistributive

measures like land reforms, access and control of poor communities to forest and water resources, agricultural and urban land; equity in greatly enhanced fiscal allocation to targeted social sector and social assistance programmes; access to mainstream financial resources; food and work as legal entitlements; and legal and judicial reforms in favour of poor people.

Contrary to the neo-liberal worldview, none of this can be left to the markets, and all of this requires vibrant, strong, interventionist states with high legitimacy, authority, but also genuine accountability.

# Strong People's Institutions and Organisations Essential to Equitable Governance Enhance Poor People's Control Over Governance

The last important conclusion from our investigation is that strong activist states are a necessary but not sufficient condition for poor and marginalised people to secure justice and good governance. States are perennially contested institutions, which can be expected to act in the interests of people living in poverty, only to the extent that these people can influence, persuade and coerce to do so, through their institutions and organisations. They can do this in a variety of ways: including by directly participating in governance – planning, implementation and evaluation, by enforcing accountability for both expenditures and outcomes through measures like people's audits, right to information legislation, budget analysis and citizens' report cards; and through poor people's own organisations and social movements.

It is our argument that the only feasible way of ensuring justice and good governance from the state is for people to exercise direct control over a significant part of the levers of government. In other words, there can be no justice without the active agency of the people themselves, not merely as recipients of state services, but as active partners in all that the state does in relation to people's lives.

In this book, we have observed that state arrangements with greatly enhanced fiscal allocations for social insurance and assistance, including an employment guarantee food-for-work public works

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programmes, public housing, and a genuinely inclusive and equitable education and health care system; and a conducive statutory and regulatory environment for people in poverty, are no doubt indispensable and invaluable elements in a state agenda in conformity with equity and justice. But it is important to recognise that whereas these are invaluable, they are still not sufficient.

All welfare programmes for impoverished and excluded people, tend to assist them as passive recipients while reinforcing the social and cultural beliefs that cause or strengthen their exclusion. Thus, rural and urban people who live in poverty, dalit and tribal communities, as for that matter all marginalised people, such as those who live by begging, street children, homeless people, women, victims of violence and sex-workers, are all provided 'services' by the state which are located entirely in what the state (or professionals) regard as their needs; never what they themselves aspire to. Fraser (1989) powerfully argues that the establishment of 'needs' of any group like women must be recognised as political, and the struggle to establish needs fought by those with the needs, rather than the welfare-givers or the experts. This would apply to all those marginalised groups who have 'special needs' that lay claim to state support. People are not mere recipients of services to fulfil needs regarded as appropriate by the state or professionals; they are active agents who must be involved in establishing the legitimacy of their needs, and utilising services for the fulfilment of their potentials and enjoyment of substantial freedoms.

When we recognise these people as active agents and as ends in themselves, we are not talking about their rights merely of physical survival. We recognised in this book economic, political, social and cultural barriers that deny these persons the power, the substantive freedoms, to make real choices about their own lives. A just set of social arrangements would seek to create and protect spaces for the full enjoyment of these substantive freedoms. It is only then that each person would have the space and the freedom to achieve his/her full human potential.

For instance, in the care of a person with disabilities, state policy for a monthly dole, or protection in state semi-custodial institutions may

be sufficient for the physical survival of the person. Access to health care may even ensure the correction of reversible biological disabilities and availability of aids and appliances could enable mobility and communication. But the person may still be denied entry into schools and institutions of higher learning. She/he may be denied employment. She/he may be restrained from getting married and having a family. Even in day-to-day life, she/he may not be able to access public places like cinemas and libraries because of architectural barriers. She/he may not be ceded the opportunity to contribute to society, participate in community life, fight elections and so on. Therefore, the state may ensure her/his physical survival, but she/he remains without real freedoms, behind the walls of an institution or in her/his home, unfulfilled, dependent, without dignity, and unable to develop and contribute her/his full potential. 15

We therefore envisage a state response which goes well beyond the parameters of conventional welfare, and which in fact may on occasion even contradict conventional devices of welfare like doles and institutions. We are seeking instead a caring state, which we see in terms of a state that not only consistently, sustainably and on its own initiative, provides protection and support to marginalised people; but extends support in such a manner that it is deeply sensitive to their needs and aspirations, enhances their dignity and self- reliance and above all enables people to exercise free choice over their own lives.

When confronted with a person's set of problems, the state searches typically for a scheme into which the problems can be slotted. It tends to respond overwhelmingly in terms of programmes, departments, plans, funds and so on, rather than in terms of the person's own assessment of her/his needs, aspirations and unfulfilled potential. In this implied denial, and the alienation of people from both their problem and their potential, not only the bureaucracy but also professionals, academics and NGOs frequently contribute. <sup>16</sup>

Even in the best of state responses, people are converted into inert and passive recipients of the state's services (or equally those of professionals and NGOs). When people are perceived to be weak or The Ripped Chest

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less 'abled' in any way, and in situations of disasters, this tendency is further heightened, sometimes the results are cataclysmic. 17

A possible alternate paradigm would be one in which the state starts with the acknowledgement that people are necessary, in fact primary partners, individually as well as through their own organisations, in any process of assessing their own needs and finding solutions to their own problems. In such a paradigm, the whole process of achieving solutions itself becomes empowering. The role of the state would clearly extend well beyond the providing of services. It would involve firstly the recognition, protection and effective enforcement of people's entitlements. It would further be to acknowledge, create, nurture, provide resources for, and actively support, all efforts by people and their organisations for the solution of their own problems.

It is important to emphasise that we are not arguing for a reduced, but rather an altered role of the state, one that recognises and supports people's real freedoms, and is enabling and supportive of people's own action. The state would then assist people to achieve solutions that are based on their own assessment of their needs, promote their self-reliance and dignity, and are based on the fulfilment of their own potential.

It is interesting that Sen (1992 *ibid*) in his extremely important monograph on inequality, on which we have relied significantly in this investigation, contrasts 'freedom', which he values highly, with 'direct control'. He believes that many freedoms operate by our getting what we value without directly exercising the levers of control. He argues that in a complex society, it is compatible for my 'effective freedom' to be uncompromised, but my 'freedom as control' to be limited or absent. For instance, he states that we may choose to live in an epidemic-free world, and public policy may enable us to achieve this value, but we do not control the process of eliminating epidemics.

The problem with Sen's premise that it is possible to enjoy freedoms without exercising control over governance, is that there is no problem for me in an immediate practical sense, as long as public policy acts in conformity with my choices. But suppose it does not. In

Sen's own example, suppose I choose to live in an epidemic-free world, but the state does not invest in the necessary resources, or the bureaucracy is corrupt, careless and slothful, and therefore, does not ensure compliance with my choice of a world free of epidemics. In such a case, I can ensure my effective freedom only to the extent that I can effectively exercise control over public authorities.

It may then be argued that this power is guaranteed at least in liberal democracies, through the right to vote. According to this view, indirect control over government, exercised mainly through universal adult suffrage, is sufficient to ensure that a neglectful, corrupt or lazy government, which does not conform to my choices or preserve my effective freedoms, is changed.

This in fact is the dominant orthodoxy in both the theory and practice of liberal democracy worldwide, that people are sovereign, but in a practical sense they are expected to exercise their sovereignty directly only by periodically electing their representatives to legislatures and local bodies. These elected representatives then in turn exercise sovereignty on an ongoing basis on behalf of the people until the next elections. In other words, the sovereignty of the people can be exercised only indirectly. Their sovereignty is in practice exercised by their elected representatives, on behalf of the people. In practice also worldwide, the elected executive is dependent on the support of large, mostly centralised bureaucracies.

It is interesting that the Marxist-Leninist state which provided the major alternative political model during the twentieth century, challenged the liberal democracy as a 'sham' disguising the dictatorship of the exploiting ruling classes which control the mode of production. It instead called for an open dictatorship of the working classes. Despite profound differences with liberal democracy, this model also is based on the premise that this dictatorship of the working classes cannot be exercised directly by all members of the working classes, and instead would be exercised on their behalf by the vanguard of the working classes, namely the Communist Party.

This premise, particularly in relation to western democracies, was challenged, in India most influentially by Gandhi. Writing for *Harijan* 

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in 1938, he presents his dream of an 'India continually progressing along the lines best suited to her genius'. He did not want India to develop 'as a third class or even a first class copy of the dying civilisation of the West'. He describes his alternative vision for India in terms of village republic or fully empowered panchayats as part of an oceanic circle, ever-widening, never ascending circles (Gandhi 1959).

Probably the greatest political lesson for the poor and marginalised people from the experience of the two major competing political systems of the twentieth century, the liberal democratic and the socialist, is that no system in which the aspirations of the poor are to be mediated by other agencies acting on their behalf – be it elected representatives, the bureaucracy or a vanguard political party – is a reliable vehicle for their aspirations. To reverse the language of Sen, it is impossible for me to enjoy 'effective freedom', if my 'freedom as control' is seriously abridged or absent.

At a practical level, it may more persuasively be argued that in complex contemporary societies, this kind of direct control may be desirable in principle, but practically impossible to achieve. However, from the perspective of poor and marginalised people, a large number of their concerns are predominantly local in nature. And for all local matters of governance, it is both feasible and in their interest to expand the limits and the scope for direct influence over the levers of local government, either individually or through their own organisations.

Since the 1980s, 'participation' graduated from a radical perspective that challenged mainstream development practice to an indispensable component of the notions of democratic citizenship and good governance. It has gained wide currency and legitimacy in official development documents, but rhetoric has run far, far ahead of understanding, let alone practice.

However, it remains an important idea, central to participatory governance and the deepening of democratic space for poor communities. Participation includes, but is not restricted to the 'process through which stakeholders influence and share control over

development initiatives and the decisions and resources which affect them' (World Bank 1995). It includes participation in governance, or as described by Mosley and Day (1992: 16) 'taking part in the process of formulation, passage and implementation of public policies'. The concept is now further expanded to the notion of democratic citizenship.

Despite the recent creation of diverse innovative legal spaces in many countries for participatory governance, the practice in most cases has been halting. A review of citizen participation in local governance in several countries by the IDS, Sussex<sup>19</sup> synthesised the empirical evidence of several barriers to participatory governance (Goetz, Gaventa et. al 2001). Local power structures, such as of class, caste and gender, dominated, distorted and subverted participatory processes.

- ♦ Legal spaces for popular participation were occupied mainly in contexts of prior strong grassroots organisation, or social movements.
- → Participatory skills, knowledge, experience and leadership were also identified as bottlenecks, both among local authorities and people from disadvantaged groups.
- ◆ Participation was founded to flounder in many contexts as public authorities at various levels local, provincial and central – lacked the political will to genuinely include deprived social groups.
- ◆ Another common barrier was the paucity of financial resources and statutory powers with local authorities, which acted as powerful barriers against people's participation in government's development activities (Goetz, Gaventa, et. al 2001).

However, despite these many barriers, there are limited but still significant successes in many parts of the globe. To list just a few successful examples, in many countries, including the Philippines and Bolivia, there are new statutory spaces created for people's planning and implementation of government programmes. In many urban municipalities in the Philippines, the Batman project engages citizens in participatory planning.

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The more detailed investigation of this book into the experience of India reinforces the scope for tempered optimism in the legal spaces, readiness and capacity of impoverished and excluded people to exercise control over governance. It has delineated how in India the most significant and innovative statutory spaces for participatory governance have been created by recent amendments to the Constitution, by vesting direct governance powers to the gram sabha By law, people collectively control development planning and implementation, local government functionaries and institutions and local elected representatives. In regions predominantly occupied by the STs, statutory self-governance powers go much further and include control over natural resources like land, forest and water, and powers to disperse justice, including protection against exploitative practices like moneylending and illegal expropriation of land, and adjudication in disputes.

It was the 73rd Constitutional Amendment in 1993 which for the first time created a statutory imperative for the establishment of legally empowered gram sabhas in India, although such direct democracy was integral to the Gandhian vision of panchayati raj even earlier. Most state legislatures accordingly provided for the legally recognised entity of gram sabhas, but the statutes remained vague and halfhearted about procedures and powers, and in the absence of political mobilisation and awareness about the potential of gram sabhas, they have for the most part remained dysfunctional and unempowered instructions. However the study observes that whatever its limitations, the law has already opened unprecedented spaces for the exercise of direct democracy by rural communities. There is enormous untapped potential in this for the poor to gain greater control over decisions and processes that critically affect the extremely difficult conditions of their lives. The challenge on the one hand is to push the frontiers of these legal spaces both through enlightened political opinion and pressure from below, in order to persuade the political leadership in various states to vest the gram sabhas with a wider range of powers for the exercise of direct democracy. On the other hand, the even greater challenge is to facilitate the actual exercise of participatory democracy through

creative and resolute use of whatever legal spaces are available, through massive mobilisation, political education and capacity-building. The actual performance of participatory democracy in gram sabhas has tended to remain uninspiring, except in small pockets of active mobilisation. In most instances, there are proxy meetings dominated by influential landowning male, upper caste elite. Law by itself cannot build participation, people need to mobilise and organise themselves to occupy these spaces to promote justice. The greatest success of gram sabhas has been in the people's planning model in Kerala, in which the state government galvanised 35–40 per cent of the state plan outlay for people's plan at local government levels. Thousands of people were mobilised to define priorities, assess resources and build plans around these.

The statutory institution of the gram sabha illustrates both the potential and limitations of the law in creating and sustaining popular participation in governance. The other example selected for close study in this book, is a movement in an organisation of poor people, to sieze control over local governance, and secure from it probity and accountability.

In Rajasthan, the MKSS, demanded access to government records to conduct highly successful public hearings in which ordinary villages audited purchases and wage payments in public works. In most countries, the growing demand for transparency in governance and legally enforceable right to information of the citizen, is being driven by corporate aspirations in their commercial transactions involving national governments of the South. It is often therefore presumed that this is an agenda of little relevance to the poor in the countries of the South. Nothing could be further from the truth, because in all these countries, the state plays a major role in all aspects of survival of the poor, but the citizen is generally powerless to enforce probity and accountability in government. The MKSS struggle for enforcing accountability is protracted and bitterly contested at every stage by the state, but there have been dramatic successes.

The experience of the MKSS illustrates how potentially powerful the right to information can be for poor people. One of the successes of

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this radical local movement has been to influence legislatures at national and many state levels in India to pass laws that acknowledge the people's right to information. This right seeks to secure for every citizen the enforceable right to question, examine, audit, review and assess government acts and decisions, to ensure that these are consistent with the principles of public interest, probity and justice. It promotes openness, transparency and accountability in administration, by making government more open to public scrutiny. The right to information is expected to improve the quality of decision making by government agencies in both policy and administrative matters by removing unnecessary secrecy surrounding the decision making process. It would enable groups and individuals to informed of the functioning of the decision making process as it affects them and to know the kinds of criteria that will be applied by government agencies in making these decisions. It is hoped that this will enhance the quality of participatory political democracy by giving all citizens further opportunity to participate in a more full and informed way in the political process. By ensuring access to relevant information and knowledge, the citizens would be enabled to assess government performance and to participate in and influence the process of government decision making and policy formulation on any issue of concern to them.

These dramatic successes notwithstanding, it would be extremely simplistic if it were assumed from these that we are witnessing a smooth, or even a halting, transition of power from the state to poor communities. What we are observing instead is a bitterly embattled territory. To carry the military metaphor further, the battle is undeclared and largely unacknowledged. Therefore, there is no open war, only skirmishes, guerrilla encounters, reconnaissance, tactical retreats and elaborate subterfuges.

The contested space in this war, which had long been the substantial monopoly of the state, is the control over people's lives. This power of control in fact has both positive and negative components. The former encompasses what goes by the name of development and incorporates many elements of patronage and discretion. The

negative elements are of regulation, restraint and punishment. For a complex range of reasons, not yet fully understood, the state today in many countries across the world, confronts an unprecedented crisis of legitimacy and of resources. Therefore, it has begun a process of sharing some of its positive powers of patronage and discretion in 'development', and its responsibility for providing services to the poor in which its record anyway had been bleak, but significantly, rarely its negative powers, with civil society.

It must also be recognised that neither the state nor civil society are monoliths, therefore, this contestation is by a wide range of actors pitted on each side, fighting often separately, without co-ordination and not infrequently, at cross-purposes. The state comprises the bureaucracy and elected representatives, governments at the central, state and local levels, the executive, the judiciary and the legislature, and increasingly international governments, financial institutions and arguably corporates. Civil society comprises basically communities, which are in turn elaborately divided by class, caste, gender, age and so on. Then there are a range of organisations which claim to act on behalf of communities, ranging from formal and informal organisations of various segments of communities, people's movements, funded NGOs, trade unions, political parties, academics and so on. Several of the latter actually are located in the grey zone between the state and civil society, reinforcing the interests of one or the other.

What we require, therefore, is a much more nuanced understanding of the processes by which citizens, and particularly impoverished and excluded social groups, are gaining some control over governance. If we recognise how bitterly contested a territory we are witnessing, it would be possible for us to go below the surface of official proclamations, and laws, of which the stated aim is the empowerment of communities. We would see that the state, in a historic moment of unprecedented crisis, seeks to retain power by sharing it with some elements of civil society. We would observe that whereas international capital has succeeded in coercing the state to give up a great deal of its negative powers over the corporate sector, the lives of poor communities remain as tightly regulated as in the past.

However, it is both by occupying these reluctantly ceded spaces and by themselves pushing the frontiers that disadvantaged people can gain greater control over both governance and the extremely difficult conditions of their own lives. They need to actively and resolutely resist the corrupt and arbitrary exercise of state power, but at the same time oppose the retreat of the state from its paramount responsibility of justice and equity to all its people.

The investigation of this book places its weight behind not a reduced role for the state, but instead an altered role of the state. It envisages the struggles of oppressed people everywhere to be for strong, caring states which actively intervenes for their paramount duty of securing justice, equity and happiness for all citizens and living creatures. It envisages at the same time strong institutions and organisations of dispossessed and excluded people who assert as an entitlement their right to participate in all aspects of governance, but also to hold the state tightly, continuously and effectively accountable.

# Endnotes

- 1. See Bilasini's full story 'Doomed to Bondage' in Mander 2001, p.127.
- See Bhagmania's full story 'Living with Hunger: Musahaars of Eastern Uttar Pradesh' in Frontline 2002.
- For detailed story please refer to 'The Home Beneath the River' in Mander 2001, p.112.
- For detailed story please see 'Choices on the Streets' in Frontline 26 April, 2002
- For detailed story please see 'The Seal of the Sarpanch' in Mander 2001, p.137.
- 6. Please see 'After the Bhopal' in Mander 2001, p.1.
- 7. Please see 'The Land of Jagtu Gond' in Mander 2001, p.72.
- For detailed story please see 'A Battle Against Forgetting Bhagalpur' in Mander 2001, p.47.
- 9. For detailed story please see 'Scavenger Narayanamma' in Mander 2001, p.37.
- For detailed story please see 'The Secret Wounds of Jatin' in Mander 2001, p.87.
- 11. For detailed story please see 'A brief journey' in Frontline, 25 May-June 7, 2002

- For detailed story please see 'The Threatened Settlement' in Mander 2001, p.206.
- 14. For detailed story please see 'Hounded Like Criminals' in Mander 2001, p.13.
- 15. Dreze and Sen (ibid), p.190.
- 16. It is pertinent that the profound and persistent denial of rights of marginalised groups have been neglected almost completely not only by the state, but even by civil rights groups, the organised left, the press and the academic mainstream.
- 17. In formulating the insights of this paragraph, I was particularly aided by a discussion with Dr R Srinivasa Murthy, NIMHANS, Bangalore.
- The result of the exclusion of people who are in great distress from the solution of their own problems, may be illustrated by the experience, in the aftermath of the Bhopal Gas disaster of 1984, outlined in the case study of Sunil included in this volume.... The Indian government through the Bhopal Gas Leak Disaster (Processing of Claims) Act in March, 1985 arrogated to itself sole powers to represent the victims in the civil litigation against Union Carbide. The law specifically denied the survivors the right to seek their own entitlements. On behalf of the victims the Indian government filed a suit for compensation of more than three billion US dollars in the Federal Court of the Southern District of New York. The case was returned in May, 1986 to the Indian courts on grounds of forum non-convenience, under the condition that Union Carbide would submit to their jurisdiction. On Feb 14, 1989 in a sudden departure from the matter of interim relief which it was deliberating, the Supreme Court passed an order approving the settlement that had been reached between the Government of India and Union Carbide without the knowledge of the claimants of Bhopal. According to the terms of the settlement, in exchange of payment of US \$ 470 million the corporation was to be absolved of all liabilities, criminal cases against the company and its officials were to be extinguished and the Indian government was to defend the corporation in the event of future suits. The settlement sum, nearly oneseventh of the damages initially claimed by the government, while being far below international standards is also lower than the standards set by the Indian Railways for railway accidents. Moreover, the extinction of criminal liabilities in a civil suit was unprecedented in Indian jurisprudence. This was only the first of a series of incidents, which continue to the present day, in which the survivors feel that their rights have been denied by the intervention of the state, but they are powerless to defend their own rights.
- See for example Francis Fukuyama (1992), The End of History and the Last Man, London: Penguin Books, pp. xiii-xiv.
- 20. They are organised into 14 different types of voices and are available on www.ids.ac.uk/ids/govern/citizenvoice/annexes.html

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# Glossary

Dalits	Lower caste groups
Gram Panchayat	Village governing body
Gram Sabhas	Group of village members
Jan sunwais	Public hearing
Panchayati Raj	Village level local self government
Panchayats	Units of local self government
Panches	Elected members of Panchayat
Patwaris	Government official to keep land records
Sarpanch	Village head (traditional or elected)
Talukas/tehsils	Sub-district administrative division
Tehsildars	Administrative official at the local level
Thana	Police station
Zila Parishad (ZP)	District local government committee